

The business of live music in South Africa and the jazz musician

University of Cape Town

Name: Emily Bruce

Student number: BRCEMI002

Supervisor: Dr Mike Campbell

Submitted in partial fulfillment for the degree Master of Music (MMus)
at the University of Cape Town, 2013

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Acknowledgement

The financial assistance of the National Research Foundation (NRF) towards this research is hereby acknowledged. Opinions expressed and conclusions arrived at, are those of the author and are not necessarily to be attributed to the NRF.

TABLE OF CONTENTS

CHAPTER 1.....	7
1.1 Introduction.....	7
1.2 Background.....	7
1.3 Purpose of study.....	8
1.4 Methodology.....	9
 CHAPTER 2.....	 10
Literature Review.....	10
2.1 South Africa.....	11
2.1.1 The South African Music Business by Jonathan G. Shaw.....	11
2.2 The United States of America.....	12
2.2.1 The Musician's Business and Legal Guide compiled and edited by Mark Halloran.....	12
2.3 The United Kingdom.....	13
2.3.1 Paying the piper: a study of musicians and the music business by Krysztof Kubacki and Robin Croft.....	13
2.3.2 All you need to know about the music business by Donald S. Passman.....	14
 CHAPTER 3.....	 15
What is the business of music: discussing the value chain in the music industry and the value of the live music business.....	15
3.1 Where does jazz fit in?.....	16
3.2 What is the value of live music in South Africa?.....	17

CHAPTER 4.....	19
How does the business of music operate in the live music industry in South Africa and what is the effect on the jazz musician?.....	19
4.1 What work is available to the South African jazz musician?.....	19
4.2 What is the average earning capacity for live jazz musicians?.....	21
4.3 Are there any legal rights for jazz musicians in the live music industry?.....	23
4.3.1 South African Legal Acts and the South African Rights Organisation (SAMRO).....	24
4.3.2 Needletime Rights and the Performer's Organisation of South Africa.....	26
CHAPTER 5.....	28
The value of a musician's union in South Africa: a study of the Musicians' Union in the United Kingdom and the Musicians Union of South Africa.....	28
5.1 What is the purpose of a musician's union?.....	29
5.2 The Musicians' Union of the United Kingdom.....	30
5.2.1 Background.....	31
5.2.2 How does the Musician's Union operate?.....	31
5.3 Performing Rights Society and Mechanical Copyright Society.....	34
5.4 Public Performance Licensing.....	34
CHAPTER 6.....	36
What changes can be made in order to assist, provide for and protect the rights of jazz musicians in South Africa?	36

6.1 The Working Musician.....	36
6.2 Music business education in South Africa.....	38
6.2.1 What courses are available in South Africa?.....	38
 CHAPTER 7.....	42
Case studies.....	42
7.1 South Africa.....	42
7.1.2 Case Study number three (CS3).....	42
7.1.3 Case study number four (CS4).....	48
7.2 United Kingdom.....	56
7.2.1 Case study number one (CS1).....	54
7.2.2 Case study number two (CS2).....	56
7.3 Comment by author.....	60
 CHAPTER 8	62
Survey.....	62
8.1 Survey questions and responses.....	62
8.1.1 Question 1, 2 and 3: Establishing factors.....	62
8.1.2 Question 4: Have you ever completed any formal business/business of music studies in SA? (Apart from component courses like the SACM, UCT semester course <i>Business Management for Musicians</i> included for undergraduate candidates)	62
8.1.3 Question 5: Do you see yourself as a business or as an artist?.....	63

8.1.4 Question 6: What is the vision you have for yourself and sustaining your career as a jazz musician?.....	63
8.1.5 Question 7: What do you think the purpose of a musician's union is and how do you feel you should/would benefit from being a member?.....	65
8.1.6 Question 8: Do you feel there is a need for a musician's union separate from the Creative Worker's Union of South Africa (CWUSA)?.....	66
8.1.7 Question 9: If music business courses were available at any institution in SA (i.e. not only tertiary) would this be beneficial for you and do you think the music industry would change as a result?.....	67
8.1.8 Question 10: What is your impression of the activities of the music business at the moment and what you think could change?.....	69
CHAPTER 9.....	72
What the jazz musician needs to know to function as a business-minded service provider in the live music industry.....	72
9.1 What is a typical jazz musician?.....	73
9.2. What does the jazz musician need to know to operate as a business?.....	73
9.2.1 Personal and business finance planning.....	74
9.2.2 Costing and budgeting.....	75
CHAPTER 10.....	77
Conclusion.....	77
References.....	79

CHAPTER 1

1.1 INTRODUCTION

The goal of this dissertation is to investigate how the business of music operates in the live music industry of South Africa in relation to the jazz musician; also what systems are in place that assist, protect the rights of, and provide for, the jazz musician (bearing in mind that most jazz musicians double as session musicians and dabble in various genres). Research will be conducted into what is working well within the live music industry in the UK, particularly in cities that have a rich population of active jazz performance venues and therefore, also jazz musicians. The intention for this research is to seek out the need for changes to be initiated in the South African music business with special focus on the jazz arena and particularly, conduct and legislation in the live music industry by drawing comparisons with the UK. The author's intentions are that possible alternatives will emerge during the course of this research that could increase the productivity and growth of the industry in terms of policies and systems, distribution of knowledge and access to information, successful unionisation and music business education. This study will include a component that will outline suggested key elements of the business side of music in relation to recognising the value of professional business skills for students studying jazz at tertiary level and for all professional musicians in the live music sector.

1.2 BACKGROUND

The history of the business of music can be considered to date back to the first copyright law which came into effect in 1710 and was enacted by the British to protect all songwriters. This led to international copyright systems coming into play through international treaties. It is then possible to associate the beginning of the history of the music business in South Africa with the annexation of the Cape by the British and the institution of their laws and policies, thus dating its inception at 1795. By this time, music had long been viewed as a commodity and existed as a service with musicians earning or being 'rewarded' through patronage and donation rather than a living wage or fee. Up until the introduction of this copyright law, music in general was a disorganised business that was free to be remembered, traded or copied.

(Shaw, 2009: 186). Music publishers reaped the top rewards for the sale of printed sheet music, as this was the most valuable and profitable application of music at the time. With the introduction of the phonograph in 1877, believed to be powered by the mind of Thomas Edison, the business of music would divert from printed music as the head of the profitable music hierarchy to recorded music and live music performances via the radio, as its high-earning heir.

By definition, the word 'live' in relation to music is used to describe performances that occur in the presence of an audience, as well as broadcasts that are transmitted at a particular time. In addition, the word 'live' was being used in this context from the 1930s to include performances that were not pre-produced in a studio or played via a playback device, constituting the live experience as a co-presence associated with a "face-to-face relation in the same physical space" (Holt, 2010). Live music concerts became the most privileged form of musical performance in western culture from the 1800s and jazz performances created a small-scale concert aesthetic from the 1930s (Holt, 2010). Thus, jazz is predominantly viewed as embodying the art of the listening audience in a concert-type setting.

1.3 PURPOSE OF STUDY

This study is directed towards understanding how the live music industry operates in South Africa and what the effect is on the jazz musician. The aim is to identify what changes could be implemented in order to provide support for the jazz musician by identifying the challenges jazz musicians face in their working life and therefore assist in the development of the industry as a whole for a growing market, including what jazz musicians can do to improve on for themselves, where government and jazz musicians can communicate more effectively through an efficient and effective musicians' union (which includes the jazz educator) and investigating how and why music business education is vital to increase the level of understanding, implementation and progress of the business side of the live music industry.

In recent years, the Western Cape Department of Education in South Africa has accepted jazz as an alternative study to classical for learners who elect to study music as a subject for Senior Certificate examinations. This will result in (and is already showing proof of) a steep rise in the academic and skill level of hopeful jazz musicians entering universities and other tertiary institutions, thus contributing to the level of jazz

music in South Africa in its entirety. The author's opinion is that the jazz music industry in South Africa is at risk of stagnating and is in need of positive change with regard to the functioning of the live music sector in order to create a healthier environment for the next generation of jazz musicians. These possible changes could also assist jazz musicians who have been in the industry for many years by including some level of protection for jazz musicians' rights and providing a level of financial assistance for all retired and ailing jazz musicians.

The introduction of systems and policies that provide support and protect the rights of jazz musicians and jazz educators could result in an exponential growth of the jazz music industry in such a way that, culturally, the music continues to enrich South African society and allows for jazz musicians to provide adequate financial support for themselves and their families at the same time. In addition, by introducing these systems and policies through education, learners as young as grade ten to jazz students engaged in tertiary level studies and most importantly, the jazz musician already functioning as a professional within the industry, will be able to take more responsibility for themselves as a business with the support of government and legislation. The author believes the future for jazz in South Africa can develop into a vigorously productive and beneficial industry for all musicians, industry professionals and the listening public at large.

1.4 METHODOLOGY

Qualitative methods will be used for the purpose of this dissertation and the literature review will be conducted to determine what has been written about how the business of live music operates in South Africa and how this relates to the jazz musician, as well as how the business of live music operates in the UK, to determine what is functioning well and what can therefore be considered a viable option for the South African live music industry. The author's intention is to focus only on the live music industry, as this area appears to be largely informal, unregulated and grossly under-researched.

The author will conduct interviews with jazz professionals within the live music industry to gather information that may be relevant to this dissertation. Where possible, the author will attend short courses that relate to the topic of this dissertation in order to provide support for the author's views, as well as additional information not yet published.

CHAPTER 2

LITERATURE REVIEW

The live music industry seems to be shadowed in mystery. Several lengthy searches conducted by the author revealed that very little published and peer-reviewed work exists that relates directly to the live music industry on its own in comparison to the recorded music industry. There is a surfeit of information on the recorded music industry, including lengthy explanations and detailed focus on topics such as copyright laws and royalties. Most books dealing with the music business focus on management, marketing and intellectual property, as well as contractual law, publishing, and the recorded music industry in general. The same is true of online resources that contain information about the music industry, such as journal and newspaper articles and websites.

However, there have been a select few published works that have shed light on the live music industry. One online resource has proven to be a wealth of information and a direct link to the author's research on the value of a musicians' union. The website of the Musicians' Union¹, United Kingdom and the website dedicated to the history of the union² has provided essential insight into the live music industry as it is conducted in that country. There appears to be no similar online resource available for the live music industry in South Africa and what is available to the public is mostly posts on future/previous performances, information on new musical equipment and other music industry news. Most articles published in SA are either reviews of albums and past events or press releases for upcoming shows. The most valuable resource from the SA vantage point is Jonathan Shaw's (2010) book, *The South African music business*³. Shaw's writing deals with all areas of the music industry, with some direct focus on the live music industry. He states that information about the live music industry in SA is not freely available to the public, unlike countries such as the US where the accepted method for calculating the contribution and monetary value of the live music industry is by assessing the number of tickets sold. In SA this information is confidential. He goes on to explain that this lack of information resulting from limited access to statistics

1 Available: www.musiciansunion.org.uk

2 Available: www.muhistory.com

3 Nick Matzukis' book *South African Copyright, Business and Contracts* was brought to the attention of the author after submission.

about the live music sector is partly the reason for poor results in estimating the growth of live music.

Another vital source of information was found in the research paper by Krysztof Kukacki, University of Wales and Robin Croft, University of Glamorgan (both universities are in the UK). Their paper, *Paying the piper: a study of musicians and the music business*, has proved to be an important reference with respect to how musicians see themselves and whether they are more inclined to view themselves as a business or an artist, and how this affects the industry.

2.1 South Africa

2.1.1 *The South African Music Business* by Jonathan G. Shaw.

Shaw's (2010) work provides valuable information about the legal side of the music business. His chapter, Entertainment & music legal aspects, highlights the state of the legal system in terms of music in SA. His writing also includes information on performance licenses and the Performer's Protection Act 1967.

Shaw's brief outline on the history of the music business was a vital contribution by setting the scene for how the business of music has evolved into the music industry we know today. Unfortunately, not much information pertaining to the live music industry is provided, with more attention on the introduction of the recording industry and copyright and publishing laws.

The area in Shaw's book of most relevance to this research is his chapter, The South African music marketing environment, which includes statistics on "live music industry estimates"; information that is vital for this dissertation. He discusses the reality of "a lack of understanding about the fundamental operation of the South African music industry". He goes on to explain that many new artists, as well as many of those who already work in the industry, do not understand and also misunderstand much about the business of music which is due in part to the lack of human resources for the "business aspects of the industry" (Shaw, 2010:205).

Shaw's final chapter, Life skills in the music industry, offers brief but informative tips on financial planning for the creative artist who functions as a freelance executive and independent contractor. He also explains in short that, as independent contractors, creatives do not fall under labour legislation but need to acquire the appropriate life

skills from early in their career to establish themselves with proper financial understanding.

2.2 The United States of America

2.2.1 *The Musician's Business and Legal Guide* compiled and edited by Mark Halloran.

Halloran's 1991 publication is geared towards musicians living and working within the United States. What is interesting about this writing is that, although Halloran's observations and research are more than ten years out of date, all of the content is extremely relevant to today's musician. Halloran's chapter, *Getting started: music as a business*, provides key information. He begins by introducing the concept of selecting an original name for the artist/band/product, discusses trademark and service mark in relation to the artist/band/product and why it is important to protect this name and how to do so.

Edward R. Hearn's discussion, *Business entities*, includes valuable information relating to the concepts and understanding of sole proprietorship, partnerships and corporations, and also provides concrete examples of critical written agreements in partnerships and instances where there are no written agreements. Halloran's chapter, *Music attorneys* explains the role of a music attorney, when it is vital to consult one, and offers examples of agreements between attorney and the artist/band in a clear and understandable format for reference. This information may not be as relevant for South African musicians as it is for American musicians as the role of the music attorney in SA is almost non-existent but this understanding of the music attorney-artist relationship is important for the purpose of this dissertation.

The *Live performance* chapter offered not only vital information relating to the live music business in the US, but also the mindset of establishing written contracts before performance; an adjustment that South African musicians sorely need to adopt: "Making arrangements in a club deserves special consideration and planning. You should keep in mind that your ability to get your business out there will be enhanced by getting your

business act together" (Hearn in Halloran, 1991:81). Clear examples of various formats for club contracts are also included for use and reference. The *Managers and agents* chapter outlines the various roles of management within the music industry and

explains the role and unique function of the manager, personal manager, talent agent and business manager, respectively. These descriptions were of particular interest to the author, as management in SA is generally limited and therefore information is vague. This chapter shed significant light on why management is crucial for success in the live music industry.

James A. Sedivy and Gregory T. Victoroff's contribution, *Music unions*, assisted in explaining how musicians' unions operate in the United States and why it is beneficial to be a member. This section primarily deals with the American Federation of Musicians of the United States and Canada (AFM) and the American Federation of Television and Radio Artists (AFTRA).

Although informative and in depth with regard to the music industry on all levels, Halloran's book makes no reference to genres nor includes any information that is genre-specific.

2.3 The United Kingdom

2.3.1 *Paying the piper: a study of musicians and the music business* by Krzysztof Kubacki and Robin Croft.

Kubacki and Croft's research deals specifically with the artist's attitude towards treating music as a business and "key criticisms of the music business which have been prominent in academic literature" (Kubacki and Croft, 2005). Through this research the authors discover that many artists believe that treating music as a business stifles creativity and "represents a particularly insidious force in cultural life".

Issues discussed include the assumed mindset of the artist as one who lives for his/her passion and will not consider what is demanded in a "myopic public" and with "unrelenting market forces". In addition, the authors discuss whether art that sells loses its integrity for those artists who believe that living for their art and creating art for art's sake should be supported and nurtured by society as a "moral imperative".

The most valuable point of reference in this publication is the authors' views on the position of the corporate world in the artist's life. They contend that, although the vantage point should be from that of the artist, who is essentially the product, there is a definite imbalance in the role of business and marketing in the arts, which favours the corporates. Furthermore, they state that the music industry is overwhelmed by individual artists and bands, to whom the statisticians refer as "Small to Medium

Enterprises (SMEs)", and the question is then explored as to whether musicians identify themselves as businesses and "recognise themselves in this designation".

2.3.2 *All you need to know about the music business* by Donald S. Passman

Passman's work deals with both the American and British situations and the similarities and differences between them are highlighted throughout. He begins with the invaluable necessity of hiring a team that works for you (the musician) and why it is of such great importance to start your career in this way. The team consists of managers, accountants and lawyers and Passman explains in detail the contributing factors the musician must consider before hiring his/her team. This information sparked the proverbial lightbulb moment for the author in that no other previously explored publication had made it clear that the team that works for the artist is selected by the artist and not conversely, i.e., it is not necessarily true that the status of the artist dictates when and how and who will represent them in the industry. Passman continues to introduce the role of each team member and discusses proposed fees and methods in selecting correct team members.

The bulk of this publication deals in great detail with record deals, songwriting and music publishing and motion picture music. It is interesting to note that Passman's vantage point is that of representing artists in the popular and more commercial streams of music but he has singled out classical music as a chapter in itself where he discusses the genre specific situations. In short, classical musicians deal with the same issues as other genres with the exception that, in most cases, these artists do not record their own compositions and these records are generally much more expensive to produce. He illuminates these notions by explaining various components in detail which the author feels could relate to the jazz musician if explored.

CHAPTER 3

What is the business of music: discussing the value chain in the music industry and the value of the live music business.

Music is an art form that has, through the ages, permeated society with religious tradition and entertainment value, political and lobbying activity, the creation and documenting of cultural heritage and the socio-economic development of an industry that provides for more than just the pleasure of the music itself. With a market that has the potential to earn US\$36.9 billion globally and provide jobs for more industry professionals than the artists themselves, the music industry is a sector in its own right. In 1998, Africa accounted for 0.6% of the total global music earnings. Of that percentage, SA is the largest contributing country (Ambert, 2003).

In order to establish how the music industry operates it is important to explore the value chain and understand the relationships that constitute the industry. Traditionally the value chain exists as an interlinked series of activities that a product undergoes before reaching the consumer (Shaw, 2010). Each link or process contributes value to the product in a way that the previous link could not. In the music industry these links are imperative for success in profiting the musician.

According to Shaw, the links in the value chain can be labelled as Facilitators, Creators, Enablers, Revealers and the Consumer.

An example of a Facilitator would be the educational institutions which provide platforms for learning, networking and gaining experience. Royalty and licensing collection agencies, such as the South African Music Rights Organisation (SAMRO), are also considered to be Facilitators as are government bodies, such as the South African Department of Arts and Culture and the National Arts Council.

The musician or artist is considered to be the Creator as they produce the art or product that can then be traded. Without the Creator there is no product. This simple fact is often overlooked by the Creators themselves who could see their creation as purely a means of art for art's sake and not a product to be sold in the music industry for profit.

Enablers are the companies and/or individuals in the music industry who “exploit the creators for mutual beneficial gain” (Shaw, 2012). They are the record companies, booking agents, managers, music publishers, etc. Enablers provide support for the Creator to produce the product.

The Revealers are the individuals or corporations that have access to the market: namely, the press, radio and television broadcasters, printed media, music venues and promoters, social networking and internet search engines, retail, etc. (Shaw, 2010). Revealers expose the Creators to the market.

The Consumer is arguably as important as the Creator and could be considered to be of greater importance overall. The Consumer is responsible for guiding the market's taste (Shaw, 2010). Depending on what the Consumer purchases, the market will be directly affected by their likes and dislikes.

With the steep rise in internet use and easier availability, vigorously growing social networking lifestyle and the subsequent decline in dependency on record deals, the traditional look of the value chain is changing.

3.1 Where does jazz fit in?

In SA, when discussing jazz and jazz musicians it is apparent that there is some distinct difference to what jazz is and what constitutes a jazz musician. Jazz, being an American art form, is steeped in the traditions of blues, ragtime and bebop. Jazz in SA is a mixture of those same collectives, with contributions from the freedom struggle of the apartheid years, cultural heritage and personal musical taste. There is a broad spectrum of comparison in the music that South Africans too quickly label as jazz and what is pragmatically pronounced to be 'actual' or 'real' jazz by the traditionalists and jazz practitioners of the world. Many of SA's musicians who are referred to as being jazz musicians come from a pool that was born out of the tradition of jazz together with the traditional music of SA's indigenous heritage and also the complexities of the apartheid years. This combination is also understood, labelled and widely recognised as being South African Jazz.

It is important to be clear on this dissimilarity. In a country such as the US or the UK, a jazz practitioner and traditional classic jazz musician would be of similar stature to the

great jazz artists, such as Duke Ellington or Ella Fitzgerald, for instance. These two pioneering musicians are examples of homogenous jazz musicians who played a very specific form of the genre and contributed greatly to the creation and legacy of 'real' jazz. In SA many musicians are referred to as jazz musicians, which habitually lends itself to including the broader spectrum of jazz's offspring, as many of these South African musicians do not technically play the purist or traditionalist form of jazz. There is a considerable difference which is simply factual and not in any way good or bad.

The confusion and misrepresentation for South African jazz musicians and patrons is due in part to the function of music in the fight against apartheid combined with the diversity of jazz as an evolving art form. In 1976, Dollar Brand's iconic composition, *Manenberg*, became the anthem of the struggle for equality and freedom from oppression. Many other musicians also rose up against the oppressive hold of apartheid through songwriting, recording and illegal performances of banned compositions. Many South Africans also confuse smooth jazz, soul and Motown with jazz. This is, in part, the error of the radio disc jockeys who, over the years, have incorrectly referred to these genres as 'jazz'. Again, this is merely an observation and should not be considered good or bad.

3.2 What is the value of live music in South Africa?

Many South African musicians and industry professionals will attest to the fact that the lion's share of their income depends highly on live performances and not from CDs, DVDs and merchandise sales or the recorded music industry in general. In the most recent release of complete statistics in 2007, the entire entertainment industry of SA was estimated to be worth R7.4 billion with an approximated 100 000 people working in the industry. In the same year, the South African music industry was estimated at a value of R3.6 billion (Shaw, 2012:207).

Unfortunately for the researchers who attempt to log the fundamental statistics of what the live music industry produces, little to no such information is currently available. In the US and internationally, information pertaining to ticket sales and revenue procured from live performances is freely available to the public. This is not the situation in SA, where ticket vendors and concert promoters are entitled to hold this information confidential (Shaw, 2012:216). The refutation of this vital information results in a near

impossible task to reveal the value of live music in SA and prompts the question of whether there are other ways to calculate the profits of the live music industry.

CHAPTER 4

How does the business of music operate in the live music industry in South Africa and what is the effect on the jazz musician?

Jazz musicians in SA are no different to their global counterparts. Although many, if not all, begin their journey with a desire to play the purist form of the music, the reality is that the genre can support only a handful of these 'purists'. These golden few will rarely, or never, play outside the style of jazz's swing, bebop and cool. For the rest of the pack the reality of making ends meet, combined with the non-purist's enjoyment of other genres, results in their doubling as funk, rock, pop, world, electronic and dance musicians who form non-jazz projects that are often more feasible financially. And then there is also "smooth jazz", the genre that emerged from the traditional jazz purist teaming up with contemporary fusion. Many South African 'jazz' musicians are smooth jazz artists who have combined this genre with traditional South African music⁴. Some add elements of hip hop, soul, and even folk or country. Many jazz musicians therefore become pioneers in new fields of eclecticism. This pioneering ability is also true in SA where many of today's successful contemporary artists were originally traditional or classic jazz musicians who stepped out of the niche to explore more financially fruitful options.

4.1 What work is available to the South African jazz musician?

Generally speaking, there are two types of jazz musicians: self-taught jazz musicians and formally educated jazz musicians, the latter having studied music at junior and/or high school and/or at tertiary level. Although this terminology is crass in its description of what constitutes a wide range of contributing factors, these two group titles are adequate for the purpose of this research. Nevertheless, regardless of being a self-taught or an educated musician, the job opportunities remain similar and both types of musicians contend with the same market.

The reality for the self-taught musician is that their path is often a more difficult and tenuous one. Being self-taught does not necessarily mean that the musician is illiterate in reading and understanding music terminology, but this is often the case. There are a

⁴Such as *kwela* and *mbaqanga*.

select few who manage to plough through the theoretical world of jazz on their own to come out on par with their formally educated counterparts. However, many self-taught musicians learn by ear and play from memory. This is not to say that the level of musicianship is lower than the educated jazz musician but the reality is that the self-taught musician is somewhat limited in what is possible with respect to rehearsal and performance capability and therefore also certain job opportunities are unavailable to them, e.g., playing as part of a theatre show or big band where there are scores and specific arrangements and therefore the necessity to read music is essential.

More often than not, the initiation of 'paying your dues' is the beginning of the young jazz musician's career. Often the older and more experienced musician, who takes on the role of mentor, will guide the younger by inviting them as a guest to their performances to help them to break into the business; the younger may or may not receive a minuscule payment as a bonus for the opportunity. In some cases, the new blood will perform for the entire performance time and be paid less than the rest of the older and more experienced band members. The paying of one's dues also extends to non-paid performances that are the extension of the academic institution where the young jazz musician is studying. These gigs may in fact be paid ones, usually a smaller fee than that of a professional band due to the school/college/university band being an 'amateur' project. In some cases this fee is used to cover expenses, and a portion could even go to the director or band leader, who is often the lecturer or professor.

Gigs or live performances take many forms. The first choice for most jazz musicians is the concert space; an intimate and listening audience, free of the noise of cutlery and talking and unnecessary movement during the performance. These concert gigs are few-and-far-between, as the overheads for producing a privately-run concert heavily outweigh the profits. Organisers of jazz concerts are often patrons of the industry with a great love for the music. Many jazz musicians also team up amongst themselves to host a concert, but the profits are minimal, if any. This is due in part to the niche market that is jazz and the South African public's general reluctance to spend money for entry to such a performance. In SA there are very few public venues that are run as a regular concert space that functions as a paid listening space for live jazz.

The majority of jazz musicians in SA are forced to make a living performing in restaurants, bars and clubs where the music is secondary to the food, drinks and socialising of the clientele. Many venues such as these are part of big five-star hotels

or restaurants first and it is understandable that food and drink become the priority as this is where the profits are made.

4.2 What is the average earning capacity for live jazz musicians?

Fees and rates for live jazz performances depend largely on what the venue or client requires and how much they are prepared to pay for it. For venues that are situated in hotels and run as part of the hotel itself, the rate is set by the hotel as a salary and payment is often made monthly to the bandleader via electronic funds transfer by the hotel's accounts department. The bandleader would then be responsible for distributing the fee amongst the band members and, in most cases, the bandleader decides what each band member is paid. This method is also often adopted by restaurant, bar and club owners but there are situations where payment is made in cash 'under the table' probably as an attempt to avoid taxation. On the hotel circuit, the Food and Beverage Manager is often in charge of the entertainment, and would be less likely to want the best jazz musicians than an adequate group to get the job done at a cheaper price, similar to hiring a plumber or electrician. The reasons for this are that, more often than not, the Food and Beverage Manager or other manager in charge of entertainment is not well-informed with respect to what is good or poor quality in terms of musical performance. For the privately-owned restaurant, bar and club business, hiring musicians would be dependent on the owner's personal preference and/or the style of their business. For example, an African-themed restaurant would be unlikely to hire a traditional jazz band.

Private clients function in a similar manner in terms of payment method but, in the case of a private performance, the jazz musician has the opportunity to set his/her own rate or negotiate a rate with the client depending on the factors that constitute the performance; namely, where the performance is taking place, special requests, equipment hire, etc. More often than not, the private client will specifically seek out a jazz band that they know personally or have heard/met before and would therefore be more willing to pay for exactly what they want.

Other avenues of income for the jazz musician are the jazz festival or showcase. In SA these special job opportunities are scarce and there are many contributing factors which determine who will have the privilege of making the grade and getting the gig.

As generally occurs in the music industry, opportunities arise from who you know, who knows you and what you are already doing in the industry. Festivals such as the Joy of Jazz and the Cape Town International Jazz Festival rely on the popularity of, and demand for, your music or product in order to attract ticket buyers and secure revenue. Most often the need for the jazz musician to have a physical album that can be sold before, during and after your performance is vital to secure or even introduce the possibility of performing in one of the coveted time slots. Other merchandise, such as caps and T-shirts are also an attraction for the booking agents of these events, upping the ante along with your popularity on the local and international scene and the hype on social media sites such as Twitter and Facebook. It is the festival and showcase committees' priority to book bands that will increase revenue and these decisions are made primarily based on the committee member's own particular orientation, and judgement is not necessarily based on practical/performance factors. In terms of fees for festivals and showcases, there is more than likely a financial section of the body of the business side of the festival that secures sponsors and negotiates fee offers for specific bands. Needless to say, the lesser-known bands receive a smaller portion of the pie. The greater the band's name is in the industry, the more pull they have to set their own rates, terms and conditions.

Private performances for weddings, parties, etc. range from an estimated minimum of R1 000 per musician up to an average of R3 000 per musician, and beyond. Corporate gigs could be seen as being a combination of the hotel industry, privately-owned venues and private clients. Large companies will either source entertainment through a booking agency or events management service. Those who prefer not to go this route will use their events coordinator or, if they do not have such a position, will delegate this duty to one or other of their employees. The corporate scene is generally the first prize for the musician whose primary desire/need is to make more money for the same amount of time. These big companies have big budgets and can therefore cater for a larger deliverable expense.

At the time of this research, the average restaurant, bar and club gig is paying between R500 and R600 for a performance time of roughly two-and-a-half hours and sometimes as much as four hours (performance time is usually two long sets of roughly 60 minutes each or three sets of 45 minutes each).

The reality for the jazz musician in SA is that this rate has not increased much over the last fifteen years and longer. There are many reasons to which this situation can be

attributed. The main reason is that jazz musicians, along with all musicians in SA, do not have, and have never had, an efficiently operational union that advocates to create a fair and decent working environment for their members. An additional reason is the lack of business skills on the part of the musicians themselves in handling business negotiations with venue owners and in some cases, bad behaviour, unreliability and generally poor representation. Many jazz musicians in Cape Town feel that work is taken away from them by international acts who swoop in without any regulation to step into the already-filled shoes of the already-limited gig scene. This is particularly true in the realm of the music festival scene in Cape Town and also true for a popular jazz festival which takes place during winter. The international acts are booked for much more money than the local acts and are sought out months in advance, leaving the crumbs of the festival budget as an offering for local musicians. In addition, the mature and seasoned jazz musician soon realises that, although it is in the best interest of the industry to strive to raise the bar of these ever-present 'R500 gigs', the reality is that there will always be a younger and eager freshman who desires nothing more than the opportunity to play and gain experience and will therefore accept the minimum rate and sometimes even less. In performing for free or for a radically reduced fee many musicians are ignorant and unaware of the impact this is having on an already stagnant and slow-moving industry which is floating aimlessly in the global market without a rudder.

4.3 Are there any legal rights for jazz musicians in the live music industry?

In terms of the performance side of the live music industry there appears to be only one specific law that affects the performing jazz musician⁵. There are, however, certain statutes pertaining to music which will be discussed later in this chapter namely needletime and royalties for composers. Generally speaking the laws that affect musicians are contractual law, labour law, copyright and intellectual property law. The majority of musicians in SA are ignorant of their basic rights as workers or employees in the music industry. This ignorance is partly due to the lack of a fully functional musicians' union but mostly a direct result of lack of information and poor communication between government and musicians. Previous scarcity of business

⁵ Please see the following point 4.3.1

education for musicians is also to blame and the courses that are currently available to musicians are in their infancy⁶.

Entertainment law and the entertainment lawyer are paramount to the working lives and careers of musicians and creators in the UK and the US (Shaw, 2010). Entertainment law deals with “the law of contract, copyright, anti-trust, trademark, labor relations, unfair competition, publicity and deformation” (Campbell, 1994). The music industry in SA is of a “less formal nature” and the entertainment lawyer has become a “rare breed” (Shaw, 2010). In SA the musician is left to make legal decisions by him/herself and/or seek advice from the seasoned colleague or, in the few cases, their music manager. The result is that the industry continues, as it has for decades, to function with little to no formality and at the expense of the musician who remains ignorant; and the industry itself which does not progress. Campbell describes entertainment law as an alloy of the various legal matters that relate to the industry mentioned earlier. What is interesting is his claim that entertainment law is unique in that it “forges a new alloy on the anvil of risk under the hammer of power” (Campbell, 1994) as the years progress. Bearing this in mind, the question could be raised that, because of SA's informal practices and therefore little to no use of entertainment law, is the industry stunted as a result? What most industry professionals do not realise is that in the entertainment industry success is difficult to predict and many projects will fail.

4.3.1 South African Legal Acts and the South African Rights Organisation (SAMRO).

There is one legal act that deals directly with the live music industry. The Performer's Protection Act No. 11, 1967 gives special rights to creatives who perform literary and artistic works, such as musicians, actors, dancers, etc. The act states that nobody may record and/or broadcast an artist's performance without their consent. However, should there be no formal agreement the artist by default gives the broadcaster licence to freely rebroadcast their performance forever without notification (Shaw, 2010). In addition, nobody is allowed to make a copy of the recording of the artist's performance without their consent. The Performer's Protection Act also states that, should the artist's performance be broadcast to the public, a royalty must be paid to the

⁶ Please see p.40, 6.2

performer. This royalty is called Needletime and the artist must ensure that the percentage for Needletime royalties is outlined in an agreement between themselves and the record company/broadcaster/collection society or other music creator (Government Gazette, 2002). Needletime Rights exist as completely separate royalty to Mechanical and Copyright.

The collection of Needletime royalties for the artist is rallied through the South African Music Rights Organisation (SAMRO)⁷ which collects said royalties from the South African Music Performance Rights Association (SAMPRA) and distributes them to SAMRO members on an annual basis via the Performers Organisation of South Africa (POSA)⁸.

According to the South African Musician's Rights Organisation (SAMRO), these performance rights royalties are only payable for original works and to composers, lyricists and music publishers and not to musicians who perform these works live. These royalties are generated from the licences that are bought through SAMRO by businesses such as “radio, television and internet stations to restaurants, nightclubs, music festivals, shopping malls, car washes and spaza⁹ shops that play music in public” (SAMRO, 2013). Every business is expected to submit playlists and keep “usage returns” records of all music played at the business for submission to SAMRO on a regular basis.

On inspection, the Performers Protection Act appears to be of value to the jazz musician in SA. However, the fact that this act has not been reviewed and amended or effectively adhered to in over forty years speaks volumes to the state of the live music industry and the lack of legal support and progress. Moreover, the discovery that this is the single legal act that appears to assist performers, it is in fact legislation that affects the recorded music industry. Needletime Rights may apply to recorded works and the broadcast of these works and not to actual live performances or performers, however,

⁷ At the time of writing this paper the SAMRO website underwent a complete restructuring of content and is now a more user-friendly tool with plain English explanations for the musician to understand easily.

⁸ Please see p. 27, 4.3.2

⁹ A small convenience shop in the poorer communities usually run from a residential home. Also known as a corner shop.

for the purpose of this study it is vital information for live performance musicians to be aware of.

In addition, it is imperative for musicians to understand that the process of receiving these royalties is also only on condition that application for membership has been approved by SAMRO. It is not possible to obtain royalties owing to you if you are not a member. SAMRO refers to the individuals who play a role in the creation of musical works as Music Creators. Music Creators have the right to apply for membership on condition that “your musical works are active – which means they have been commercially recorded or performed in public, or broadcast on television or radio, you might qualify for SAMRO membership.” (SAMRO, 2013). What is troubling about this statement is that, although as a Music Creator with works that are active and therefore generating royalties, should SAMRO decide not to grant membership where does the money go? A more disturbing truth is that nowhere on SAMRO's website does it explain why membership would be declined. Moreover, how does a session musician who is not the owner of the work but is entitled to Needletime Rights gain access to said royalties? Essentially it appears that SAMRO's system is only set out to protect the intellectual property of recorded work and does not include the live working musician.

4.3.2 Needletime Rights and the Performer's Organisation of South Africa (POSA).

For many years the issue of legislation and the non-payment of Needletime royalties has been a topic of frustration for recording and performing artists in SA. Since the abolishment of legislation in 1967, performer's have not earned royalties for their performances. Without proper legislation these monies have not been paid out to their rightful owners, the musicians who sorely need every income stream available to them. However, in 2002 the South African government amended the Performer's Protection Act including payment of Needletime royalties by allowing for these to be paid by “any entity playing music in a public space, be it sport stadiums, airports, shopping malls and radio stations” (POSA, 2012).

In 2009, the Performer's Organisation of South Africa was established “to administer Needletime Rights on behalf of the Southern African Music Rights Organisation

(SAMRO), which is the body accredited to collect Needletime Rights in South Africa” (Hatitye, 2009), creating a team whereby this valuable income stream is allegedly monitored and managed. Unfortunately, since the introduction of the amendment to the Protection Act in 2002, not a cent of Needletime has been paid to South African performers.

The introduction of Needletime is facing opposition from music industry stakeholders and especially radio stations who claim that the “1.61% of gross revenue” is too large a figure to pay out. In truth, radio stations are the primary source of Needletime royalties and, according to the formulae introduced by the copyright tribunal in 2012, South African radio stations owe “R329-million, excluding interest, to record companies and performers for the use of South African music over the past decade” (POSA, 2012).

“According to POSA, a song has two components: The music work and the performance.” (Alfreds, 2009). Payment of Needletime Rights is an invaluable revenue stream for the performing and recording artist who is not a composer, arranger or music publicist. The radio stations and music industry stakeholders’ claims are merely fears of earning less money from a creative industry where surely the creators should be entitled to equal reward.

According to POSA any South African musician may register with them for payment of Needletime royalties. Registration is free and conditions are only limited to being eighteen years and older. It is unclear to the author at time of writing whether registration is sufficient for receiving Needletime royalties or whether gaining membership to SAMRO remains non-negotiable. With regard to the jazz musician, it is clear that Needletime Rights do not apply to recorded works by other composers (jazz standards or covers) and will only be applicable for the jazz musician's original works that have been registered with SAMRO.

CHAPTER 5

The value of a musicians' union in South Africa: a study of the Musicians' Union in the United Kingdom and the Musicians Union of South Africa (MUSA).

A union (or, to use the full term, trade/s or labour union) is defined in the Oxford dictionary as an “organised association of workers in a trade, profession, etc., formed to protect and further their rights and interests” (2006).

As a working professional musician and educator, the author, who has worked in both the live and recorded music arenas of SA since 1998, has been questioning the need for the support of a musicians' union for as many years. First-hand experience of the lack of information for musicians and venue owners alike with regard to the live music industry, its legislation and the way forward for both the industry and the musician has motivated this research. An additional spur was the unanimous feedback of colleagues that previous attempts at unionisation were null and void due to personal greed and corruption within the hierarchy, resulting in musicians finding themselves back at square one, lost without guidance and support, yet creating a musical and cultural heritage for the country's children and grandchildren. The aim of this study thus, was to explore the value of a fully functional union for musicians. The Musicians' Union UK was selected as an example of such an organisation. The study also aimed to investigate the situation with regard to a musicians' union in SA, historically and currently.

During the course of this research, it was found that information on the South African situation is extremely limited. The author had to rely on the little that was available on the internet and informal interviews with colleagues in the industry, as mentioned above.

An internet search took the author to the COSATU (Congress of South African Trade Union) website. Several attempts to follow online links to information about MUSA failed, except to reveal that the union was established in 1994 and merged with the Performing Arts Worker's Equity (PAWE) in 2007 to form the Creative Worker's Union of South Africa (CWUSA), which lays claim to have 700 members and is affiliated to COSATU.

There is no website for CWUSA and the only information on the organisation was found on an 'Open Group' page on the social networking site, Facebook:

CWUSA represents the needs of artists and serves as a platform for expression and networking for artists such as singers, presenters, painters, dancers, musicians, etc. as well as all other creative workers including craftworkers, photographers, promoters, agents, and technical staff, etc. CWUSA provides assistance and advice for our members regarding entertainment law and review contracts. We fight for your rights as an artists [sic]/creative worker, against exploitation [sic], and build together [sic] towards creating wealth and security for our artists [sic]. Together we can make a difference as a Union.

Unfortunately, during the course of this research there have been no posts or communication from this CWUSA source that the author is aware of.

On searching COSATU's website, all attempts to find information directly concerning CWUSA were redirected to a pre-programmed search of Google offering over 4000 related hits, none of which offers any concrete information about how the union functions and what its policies and principles are.

At the time of writing this paper, electronic communication was initiated between the author and the head of CWUSA, Mr Eugene Methetwa. No response has been received to date.

5.1 What is the purpose of a musicians' union?

In the eyes of the corporate world a musician can be seen as being regarded as a small business or enterprise sub-contracted to provide a service in fulfilment of a product-based need. Musicians are not deemed employees and therefore do not fall under the labour laws that protect and provide for employees. The definition of an employee is someone who is "employed for wages or a salary" (Oxford, 2006). As musicians are seldom in a situation where they play their instrument eight hours a day for a monthly salary, a musician is categorised as a worker who is simply someone who works.

The question could then be posed whether a union for musicians would be necessary, considering that musicians are a minority against the major workers groups, such as miners, labourers, etc. Even though this is the reality, musicians have the same needs and face the same issues as any other worker or employee. The role of a musicians' union would be to provide support for its members in time of need, help to provide and inform members on their rights and options, assist in issues relating to health and safety, intellectual property, contractual and labour law, working conditions and other issues that musicians face in their day-to-day working life.

For many jazz musicians in SA, dealings with promoters, concert organisers and venue owners are more than likely initiated via email, telephone conversation and, in most cases, face-to-face. It is in rare cases that business negotiations take place and contracts signed. Even so, free-lance musicians are then considered to be sub-contractors to the venue owner, concert organiser or promoter who either represent, or are in themselves, a company or business requesting the services of the musician. What is apparent from this observation is the lack of understanding between musician and venue owner, concert organiser or promoter as to the appropriate method for conducting these business dealings and why it is in the best interest of everyone concerned that they have knowledge of their rights in terms of the protection of the law.

For these purposes a musicians' union of SA would be the vital portal to offer support, advice and knowledge for the musician, the venue owner and the general public in order to build an industry that is on par with other business industries that also deal with finance, products and services. A functional musicians' union would also carry the requests of their members in a unified voice to the rooms of Parliament for government's consideration and subsequent action.

5.2 The Musicians' Union of the United Kingdom

The Musicians' Union, United Kingdom (MU) is an excellent example of an organisation built and run by musicians for musicians which has been in operation for a hundred and twenty years. It is worth noting that the organisation has a professionally efficient and user-friendly website which provides all the information about it. In addition, the person contacted by the researcher was friendly, professional

and extremely willing to provide information. There is a limit on the availability of public information as some links are specifically for the use of members only. However, there is a sizeable amount of free and accessible information available for download. Through the course of this research the contact professional at the London MU office agreed to provide additional information to the author's specific questions via an electronic messaging service.

5.2.1 Background

The MU was founded in 1893 and today campaigns for the rights of over 30 000 working musicians in the United Kingdom. The history and heritage of the union is so rich that a team of researchers from the University of Glasgow and the Stirling University in Scotland have been conducting specialist research in this regard that is ongoing. Their findings have been made public via the online website: www.muhistory.com.

The union was born from the need to improve pay and working conditions for musicians working in the theatre orchestras at that time. The union's founder, Joseph B. Williams, stated that the purpose of the organisation would be "One that will protect us from unscrupulous employers and protect us from ourselves."

From its birth it was decided that the union would be open to all musicians, regardless of whether amateur or professional, and this issue would surface repeatedly over the years, particularly in times of hardship resulting from unemployment.

5.2.2 How does the Musicians' Union operate?

Similar to the United Kingdom's parliamentary process, the MU is a democratic organisation governed by its members.

The union provides specialist full-time officials who are available for immediate assistance on issues that arise for their members who are musicians working in all areas of the music industry and include music students. The union negotiates on behalf of its members in circumstances that arise from issues such as health and safety, contractual advice, copyright protection, etc.

The MU has regional offices throughout the United Kingdom and offers “services tailored for the self-employed” professional musician and for the music student. The regional offices are accessible to all members in the United Kingdom and are found in London, East and South East England, the Midlands, Wales, South West England, North of England, Scotland and Northern Ireland. Within these regional offices there are specific sections that deal with the unique needs of musicians who work within certain areas of the music industry. These are called Specialist and Industrial Sections and include a team of professionals catering for what the MU terms the Jazz Section; Folk, Roots & Traditional Music Section; Gig Section; Teachers Section; Industrial Section; Music Writer's Section; Orchestra Section; Session Section and the Theatre Section. It is interesting to note that the professionals working in each of these sections are members of the union who have applied through their Regional Office for these posts because they have an interest in a specific field or have had experience in that field.

In addition, the MU believes that every member is entitled to fair representation and respect and dignity in the work place, as well as equal opportunities and rights to good service. They also believe in every member having access to the MU's support and assistance and have established an Equalities Committee to ensure that these rights are upheld. Some of the issues that are facing musicians in the United Kingdom are being lobbied by the MU on behalf of their members. These issues include “keeping the streets safe for musicians at night, mental health prejudice and the barriers to accessible travel faced by disabled freelance workers”.

There are also many campaigns that the MU sets into motion that create awareness and support for issues such as the Work Not Play campaign which encourages musicians to speak up about their experience in being asked to perform for free or very little pay. The campaign is using social media like Twitter to build a discussion and expose the unfair truth: that many musicians are faced with requests to perform for free or lower pay under the guise of there not being sufficient or any budget or that the performance is for a charity, and the most popular notion that there will be exposure for future work, which is seldom the case. The campaign is also encouraging fans and anyone who supports the music industry to become involved and voice their opinions about this topic. The MU is concerned about the increase of these types of offers for professional musicians, particularly with the rise of illegal digital downloading and file

sharing that have forced musicians to rely on the revenue they make from live performances in order to sustain themselves.

The purpose of discussing the campaigns that the Musicians' Union initiates is to draw attention to the fact that UK musicians have an effective union that proactively advocates for the continuous wellbeing and prosperous growth of the working life of their musicians. The MU does not appear to be a business run with a corporate identity that aims only to fill its coffers at the end of each month, with little regard for the wellbeing of the present and future of generations musicians. The MU is a conduit from the working musician to the ears of parliament. It exists as a fully functional, independent operational system that strives for change in the music industry of the UK. The question is then if the working life of United Kingdom musicians is in fact improved on by the MU.

An ideal example of one such proactive change is the introduction of the Live Music Act (England and Wales) which is an act of parliament and came into force on the 1st of October 2012. The Live Music Act introduces amendments to the Licensing Act 2003 mainly to “de-regulate live music in certain venues, meaning that you do not need live music to be authorised on your premises license.” (Musicians' Union [MU], 2013e). Essentially what this allows is for more venues to host live music without paying an additional licensing fee provided the venue has the correct license to provide alcohol for purchase on the premises. The act is specific to amplified live music and does not include disc jockeys and recorded music, which fall under the Licensing Act.

The MU formulated and released a “Live Music Kit” available to the public via their website, which helps to explain the Live Music Act to venue owners and musicians, as well as promote the benefits of hosting live music against the statistic of not having live music at all. The kit is an informative guide that demonstrates “how live music can help your business to thrive” and assists the venue owner on how to attract new customers while increasing sales, generating a better atmosphere and developing a higher profile within their particular area (MU, 2013e).

The kit also includes contact information for the venue owner and introduces concepts such as promotion, health and safety, hiring the right musicians and other practical advice to encourage venue owners to hire live musicians by selling the benefits of live music against recorded music or no music at all.

There is no doubt that the Musicians' Union United Kingdom is of great value to the musicians who live and work in the UK and does not only benefit the music industry but creates a ripple effect through the country with more profitable business and progress as things change. Should SA adopt a similar form of operational system in a union that engages with government in support of legislation for musicians, we may see our music industry support the growing number of exceptional ones within our borders while producing a profitable business. This is speculative in a sense, as one cannot be certain of the outcome due to the difference in opinion between the musicians themselves and the cultural and historical differences between the UK and SA. Nonetheless, the lasting truth is that, in all walks of life, every human being must work and, where there is the situation of rules and regulations, the masses need guidance and support.

5.3 Performing Rights Society and Mechanical Copyright Society

The Performing Rights Society (PRS) deals with copyright for music and the “people who write and publish songs and musical compositions” (PRS for Music, 2014a). PRS functions similarly to SAMRO in that they are an organisation that “promote[s] and protect[s] the value of copyright.” (PRS for Music, 2014b).

5.4 Public Performance Licensing

The Public Performance Licensing (PPL) exists in the UK as a non profit organisation that ensures that the individuals who “invest their time, talent and money to make music are fairly paid for their work” (PPL, 2014a). The PPL was formed in the 1930s after record company, The Gramophone Company (now EMI), argued in a court case against a coffee shop playing records to its customers that “it was against the law to play the record in public without first receiving the permission of the copyright owners” (PPL, 2014a). The record company won the case and this resulted in the establishment of this “important legal principle” (PPL, 2014a).

The PPL issues licenses to businesses and broadcasters who play recorded music to the public and distribute monies to their members some of whom are session musicians, recording artists and record labels. “PPL is one of several collection

societies in the UK that manage the rights and license different types of copyrighted material” (PPL, 2014b). Through global agreements with other music licensing companies the PPL can collect monies internationally on behalf of their members.

CHAPTER 6

What changes can be made in order to assist, provide for and protect the rights of jazz musicians in South Africa?

To begin with, there needs to be a shift in understanding for South Africans, and in most cases, the jazz musicians themselves, that the working life of a creative artist is undoubtedly different to the average and typical eight-hour-a-day job. Awareness around the unique needs of the jazz musician and all musicians is tantamount for the beginning of any real, positive change to progress and be processed.

Jazz musicians constitute a small segment in the diverse and constantly expanding sector of the creative arts. Many creative workers across all fields are subject to the inconsistent flow of income due to the nature of the business where there are frequent periods of increased job opportunity and, therefore, income and periods of little to no work and less income. The lean periods are often a direct result of low/off-peak season, namely winter, when fewer corporations, concert/festival coordinators and pub/club owners are hosting events. This rapid decline in available work can also be connected to the hibernation of the public in the winter months and to the reduced rate of tourism during this period. In addition, musicians also face fewer private jobs over the winter months due to parties, weddings and other celebratory events being reserved for the summer months.

A unique characteristic of the working life of the creative is the unavoidable need for time to be set aside for creativity to take place. In this creative time there is the risk and reality that no income will be generated. Musicians may have long periods that are utilised for the creative process of composing, rehearsing, recording, etc.

6.1 The Working Musician

In a recent study conducted by the MU (MU, 2013h), two thousand musicians from across genres and specialist fields contributed to a survey entitled, The Working Musician, that was conducted over three months in late 2012. In this report the objective is to draw attention to and understand the musician's unique needs, irregular

working life and low income in comparison to other equally qualified and highly skilled professional groups.

The most valuable components of this survey, which the author considers to be in direct relation to this dissertation, are “Tax, benefits and financial services are ill equipped to support creative workers in the UK”, “Working hours and employment status for musicians are extremely varied” and “Working musicians do not attain earnings comparable to other professional groups in the UK”. It is apparent that the issues facing the working musician in the UK are similar, if not identical, to the issues of the South African jazz musician.

With regard to tax and the creative worker, and according to the MU's findings, the financial industry is “largely designed for workers with a steady and regular work and income stream”. In terms of the jazz musician and creative worker viewed as an entrepreneur the financial services industry views entrepreneurship in music as “inherently risky and this is reflected in the availability and cost of business loans for creative industry enterprises”. In the UK situation the “rules and guidelines for musicians with regard to their employment status and legitimate business costs are uncertain and complex” and this complexity and uncertainty results in an “administrative burden” for creative workers when submitting tax returns. The final result of the tax conversation is that the tax (and benefit system) is “not sophisticated enough to recognise the unique career paths of creative workers”.

The Working Musician document also draws attention to the fact that 60% of musicians who responded to the survey had worked for free in that year. This is a vital point which ties in with the overriding mentality that music is a hobbyist past time and has no real place within the corporate world of commerce. With this in mind, the MU's survey includes remarkable statistics highlighting the earning capacity and average yearly income of highly skilled and trained professional musicians working in the UK in comparison to other professional groups. In addition, the results prove that: “Too many working musicians will face retirement with little or no independent pension provision”, a fact which is true for many South African creative workers.

It is worth noting that the results of this survey are available from the Musicians' Union UK and are presented in a functional and visually appealing format that is brimming with detail and packed with statistics, percentages and graphs.

6.2 Music business education in South Africa.

Studying, or simply playing music, has for centuries been a pastime or hobby for many children, however, historically, only the most exceptionally talented or wealthy could afford, or were gifted enough, to extend music into a profession. With the introduction of the internet and the digital world of MP3s, YouTube, and social networking sites, anyone who owns a laptop and has access to an internet connection has the potential to make it in the music industry today. However, this ease of access also has its downside, namely, the wide array of music software and samples, and the unrelenting (and hopefully not everlasting) piracy of music through unauthorised copying and file sharing. This is not to say that the premise of the gifted and talented child is completely vanquished but the odds today are increased by the challenges of the technical behemoth. In addition, the inherited consciousness of musicians unable to maintain a business sensibility due to various contributing factors, such as the creative ego and the 'rock and roll' life-style, the misunderstanding of the artist functioning as only the creator with no desire to acquire skills in business, and the apparent gap in the education system for the inclusion of business knowledge tailored for the musician and music professional, is a huge stumbling block that the aspiring musician needs to overcome.

There are many jobs in the music industry for professionals who may not previously have played music. Many of these jobs require skills in management, marketing and promotion. Booking agents, record label professionals, events coordinators, music publishers and theatre and venue professionals all need to hold some interest and understanding of how the industry operates. Few, if any, hold any tertiary education in the music business or any other academic study and all rely on their personal experience in the music industry. Having said this, it is of great importance that the tertiary institutions of SA begin to consider including an arts management degree or diploma which may include specialist fields of study, as well as music business management for the performing artist.

6.2.1 What courses are available in South Africa?

Music business courses in SA are limited. Most appear to be short courses of an introductory nature that span a few weeks or a semester. Many of the course coordinators are industry professionals who have experience in the music industry and impressive biographies of past music business dealings but none are qualified in

music business and/or arts management. Most business courses available in SA are conducted at sound engineering colleges or institutions that offer courses within the National Qualification Framework (NQF). One such is 'The Music Business', an eight week short course run by the Sound and Engineering Academy (SAE) in Cape Town. The course was introduced in January 2012 and runs four times per year. The outcome of the course is specifically geared to the sound engineer who will work in and/or manage a recording studio.

The Campus of the Performing Arts (COPA) offers a Higher Certificate in Music Business which includes modules in business & artist management, music industry overview, music publishing and music and digital distribution, but all attempts by the author to download the course information failed. The Academy of Sound and Engineering offers several music business modules that deal with the legal side of contracts, management, dealings with licensing and publishing and other practical knowledge relating to the running of an audio production business specifically. The Graduate School of Business (GSB) at the University of Cape Town (UCT) offers an Open Programme under their Executive Education stream which caters for working creatives. The GSB refers to working creatives as “Freelance Creatives” and includes the “fine artist, writer, animator, musician, ceramicist, photographer, designer, composer, theatre / screen actor or director who is in the process of establishing a career in the field of music, digital media, visual arts, theatre, film or literature.” (Graduate School of Business [GSB], 2013). The BAA course is currently in its seventh year.

The thirteen-week BAA course is directed at working creatives who require broad business skills in order to increase profitability and to “more effectively achieve sustainable success in their creative endeavours” (GSB, 2013). According to the GSB website, the programme benefits (for 2013) include a variety of intriguing topics, such as, conceptualising ideas through “Blue Ocean Strategy”, developing a fluency in the language of business and exploring personal leadership and negotiation style. Other familiar topics are also headlined for inclusion: such as, pricing a product or service, successfully completing a business plan, financial and money management skills, budgeting, cash flow and freelance tax for artists and project management skills. The author completed the BAA course in 2012 and discusses the course content in more detail later in this dissertation.

The South African College of Music at UCT runs a semester course entitled Business Management for Musicians (BMM). The thirteen week elective is coordinated and run by Mr Wesley Clarence with the supervision and guidance of Dr Franklin Larey. For the purpose of this research the author interviewed Mr Clarence and Dr Larey personally to discuss the course content and future for the growth of the course content and structuring of the elective in general. The author completed the BMM in 2007 in partial fulfilment for the Performers' Diploma in Music undergraduate program.

The full course outline, compiled by Mr Clarence, is made available to students at the beginning of the semester and consists of a brief explanation for the eleven topics which will be discussed over the thirteen weeks.

The course begins with a basic course introduction and three lectures on “Basic Marketing”. Themes discussed are in direct relation to products and services and concepts such as “market segmentation, target markets and the marketing mix”. The objective is for the student to “Demonstrate an understanding of the marketing environment” (Clarence, 2013) by the end of these lectures.

The following lecture focuses on “New Media Marketing” which includes an investigation into the “role and impact of new media as a vehicle for marketing, advertising and promotion, and as a means of creating new business models”. This lecture aims to equip the student with an understanding of the elements that make up new media marketing such as “traditional advertising streams”, social media platforms and the possibility of building an online community, blogs and blogging, and podcasts.

The lecture surrounding “Résumé, CV, Biography” follows with the aim to equip the student with basic skills in preparing a professionally adequate Resume, CV and biography. A two week lecture discussing “Interviews and Correspondence” discusses preparing for an interview and “your potential response to an advertisement”. Week seven focuses on the legal side of the course with a lecture titled “Some legal aspects in the arts”. This lecture briefly discusses the role of SAMRO, copyright and contract law followed by four weeks of lectures discussing “Business management”, “Business strategy” and “Business Finance”. These four weeks include two case studies and additional reading. Topics considered for these weeks are “effective management of a business enterprise leads to consistent value creation”, “the role of creativity and innovation in the development of a business idea”, “how strategic thinking is used to

create competitive advantage, sustainable profitability and customer loyalty” and “Taxation, funding, basic accounting and business exit strategies” (Clarence, 2013).

The final two weeks of lectures targets “Contemporary management” and “Contemporary management Themes”. Topics discussed include how the entrepreneur is able to communicate and sell their product/service via the internet and how the entrepreneurial model has changed in recent years.

From the authors perspective (as a graduate of the program and part time lecturer at UCT), the BMM course is in need of development in terms of the course content and practical components and should include guest lecturers and/or permanent lecturers who are musicians themselves. It is of great value to students to be taught by a qualified marketing and business management lecturer but the course content and method of teaching need to be relevant for the actual working conditions and situations students will face on entering the professional world. In addition, job situations will vary for genre specific situations such as opera, classical, jazz and African music. Although there are many generic aspects of business that can be applied and explored within a course such as the BMM. The author believes that by targeting genre specific situations students will have the opportunity to prepare themselves for these situations through practical assignments which may or may not be hypothetical, under the guidance of lecturers who have experienced these situations.

CHAPTER 7

Case Studies

In light of this research the author invited two jazz professionals from SA and two from the UK to participate in a case study. Participants shall remain anonymous for privacy and confidentiality. With regard to the South African case studies, excerpts from personal interviews will be included in this chapter. The full responses of the UK participants will be included as these interviews were made possible through personal email correspondence.

The author's intention for the two case studies from each country is that there is contrast with regard to years of experience in the music industry. With this in mind the participants were requested to answer questions that would establish their years of experience, as well as their academic qualifications in relation to music. In addition, the author requested information with regard to the type of work each case study undertakes in his/her yearly working life.

7.1 South Africa

7.1.2 Case Study number three (CS3)

EB: What qualifications do you have in music?

CS3: Performers Diploma in Music from UCT.

EB: How many years have you been working and earning as a jazz musician?

CS3: Fifteen years. Since 1998.

EB: Are you a member of SAMRO and how long have you been a member?

CS3: Yes. I've been a member since 1997/98. I remember when I started working with specific people who at the time were making a name for themselves in the industry I started writing a couple of tunes for their albums. I got a publishing deal and became a member of SAMRO via my publisher who was already a member of SAMRO.

EB: Have you ever received any Needletime Royalties?

CS3: No. Not yet.

EB: Does Needletime ever appear as part of your contracts?

CS3: No. Most of the contracts that I've had being a side man, in South African terms, wherever it is, whoever it is, that I've recorded with, there is no contract. Nobody ever deals with a contract when it comes to recording.

EB: Have you ever signed a 'buy out artist's agreement'?

CS3: No, but I have had an experience where somebody tried to get me to sign one but I just never have.

EB: I'm not a member of SAMRO but I understand that how it works is that I have to write and record a certain number of songs that are then recorded commercially and are active commercially in order to be considered for membership.

CS3: Yes. However, what people don't understand about that is the fact that when they say actively it doesn't mean actively commercially. It's very interesting because a lot of musicians don't know this. If you perform your music and you have a record of your performances that would then be considered active. Live in front of two or twenty people. Your song doesn't have to be recorded in order for it to be active.

EB: What work do you do to generate your yearly income?

CS3: I have a target of producing minimum two albums per year which in a nutshell is the bulk of my income. Although in the past few years I have exceeded that. Three to four artists [who I produce] has been the average. Live performances or gigs. In the last three years thirty to forty percent have been door deals. Twenty percent would be high profile work like performing at festivals, special performances with specific artists all over the country e.g. a well-known artist seeks me out to perform with them as a sideman. Then fifty percent of my overall income would be, luckily, from corporate work.

EB: Where would your work with theatre music slot in?

CS3: The theatre music work I do is more official and there is a contract. I am employed by them for a period of time. I've done two runs in SA and am going on an international tour this week.

EB: What is the average earning capacity for live gigs?

CS3: With the theatre runs in SA I earn on average R4000 per week. However, when you leave the border that amounts balloons quite a bit.

EB: Do you agree with me when I say that on average there has been an ever present rate of R500 per musician, now R600, for mainstream live gigs such as hotels, pubs and restaurants?

CS3: Yes.

EB: In terms of festivals and corporate work, do you agree that the rates start from R3000 per musician entry level, R5000 and up depending on how popular you are?

CS3: Yes.

EB: And that the rate for private gigs or private clients is negotiable but generally starts around R1000 to R1500 per musician?

CS3: Yes.

EB: Do you know of any legal rights in terms of the live music industry?

CS3: The most important legal right I know of is that when you perform your own work you fill out a notification of works form for SAMRO so that you get your publishing royalties. Not a lot of musicians do this. I haven't been doing it much myself but am starting to do it more now.

EB: So this actually has to do with publishing more than live music?

CS3: If there are other laws out there about live music, I don't know about them.

EB: What rights/legislation do you think live musicians could benefit from?

CS3: I definitely think that the Needletime royalty is something that musicians can benefit from and like I said before the publishing royalty from playing your own work. It has a lot of benefits like making the industry aware of your activities

(SAMRO specifically) and it makes becoming a member of SAMRO very easy if your work has not been recorded. I think the notification of works procedure should be encouraged because it's money and there is a long term benefit in it as it validates industrially your ability as a composer.

EB: Have you had any experience with previous attempts at a musicians' union in SA?

CS3: No, never.

EB: How will a musicians' union add value to the SA music industry?

CS3: By protecting the musician against exploitation and possibly introducing a base amount for gig rates.

EB: Do you think there would be value in a musicians' union in SA?

CS3: I think it will be a long endeavour for a union to earn the trust of musicians in SA. I don't think it's going to be possible to have a union in SA unless the union is based on the trade union ideas that exist in SA at the moment. It needs to happen on that scale for it to work. There are unions here (or have been in the past) but it's all people who are doing their own specific thing by themselves. If we had a union based on COSATU (Congress of South African Trade Unions); and people can say what they want to about COSATU's principles not working but the fact is they have worked and it is a functional union. If the musicians' union was based on this model it would be big enough to sustain the whole country. Where the problem is going to come in with music unions is that musicians have been living from hand-to-mouth for so long it doesn't matter how structured the union will be, there will always be a feeling of loss because musicians won't be able to go under the radar in order to do their own thing such as receiving money under the table. You then need to ask yourself the question, will you get everybody to join the union? A South African musicians' union will not have a history as long as the unions of America and the UK. The question is, would musicians in SA be willing to let go of their independence even though their methods are of a struggling nature? The central matter with regard to a musicians' union is that they are going to have to align themselves with the side of the musician and exist independently and not together with the corporate world, i.e., accepting financial support which could be used to manipulate the

powers that be within the union's governing body and exploit the situation for their own benefit at some point. The union must be designed in such a way that it assists the working musician through each step of his career, e.g., health and safety, tax, transport issues, etc.

EB: Please describe the process for being booked for a gig. Please include various formalities depending on the gig (if necessary).

CS3: In my experience, musicians usually get booked by other musicians and not by venues. It's not ideal as it immediately puts the venue in a position where they have a superiority mentality of 'we are doing you a favour by booking you because we have a venue' and not 'we are here to facilitate your music'. In other scenarios musicians get booked because they call the venues owners themselves trying to get booked, again putting themselves at a disadvantage of 'you called us' resulting in whatever the venue has to offer is what you have to take. That's why most musicians do door deals or similar, which is not bad or good, it's just the way it is. Similarly, festival owners (promoters) don't go out looking for musicians. You have to call them otherwise you won't get the gig and you'll just be ignored. The situation in SA is that you have to be compatible with the situation in order to get work or you must create the situation for yourself and you need to be compatible with certain musicians who are high up in the food chain. We are in an era where music is not booked for its content but booked for 'who is available at the cheapest price'. It stems from the corporate world and the capitalist mentality of what can we buy for the cheapest price and sell for the most. We as musicians, without us knowing, have been part of that system but we are at the bottom of that system because we are vulnerable.

EB: Would you agree that musicians are generally booked for gigs in a very informal way?

CS3: Yes.

EB: How often are you booked for work formally, i.e. in writing via email or by contract?

CS3: Not often. Most of my bookings that come via email come through my website. The most recent gigs that have come via email have been much better paid and have been with a contract. This is because I have been approached and can

then negotiate my fee as opposed to being approached with a gig that pays a certain amount. There have been a few agencies who have been good about that and have asked me how much I would charge. Being able to negotiate fees has been essential in that, instead of not being able to afford a quartet for example, I can offer to play trio for the same money. Email bookings do not often happen on the local scene and definitely not between the musicians themselves.

EB: Have you ever encountered any issues with regard to contracts, booking, payment or money? And in terms of festivals, do you feel that international artists get more privileges and better pay than their local counterparts?

CS3: As far as the international acts are concerned, I think it's very important that we have them play here. It's good for the local musicians because they become aware of what's happening musically in other countries and it's a positive way to network and build relationships within the industry. Because of the system that we are in, I think that the international artists are getting paid a lot more than the locals for festivals. The scale of Wayne Shorter, for example, against a local musician who is not at the same level, is understandable in terms of how many people will pay to see them play. My main concern with local musicians and festivals is when you get booked. I've seen a lot of situations with festivals here who book local musicians late. It's happened to me a few times. Their strategy is to book the international acts first and then book local musicians late by exploiting the situation from the perspective of emphasising that it is a 'late booking' and 'here's an opportunity for you' on the festival but there's not much available in terms of budget (because we've spent most of the money on the international acts) so can you do it for so much. I also know that some festivals negotiate bulk bookings with agencies/management companies who represent a certain group of artists therefore scoring by getting more artists to play for less than what they would have paid if they'd booked them for separate occasions.

EB: In terms of what the jazz musician needs to know in order to function as a business in the live music industry do you have any contribution?

CS3: Specifically about the jazz musician, we're talking about people who are accustomed to and are trained in a certain way of thinking to be expressive. What we don't consider in SA is that we are doing musicians a disservice by educating musicians to deal with musical situations and then leaving them in the

real world to deal with life as a musician. When they step into that a lot of the younger musicians have delusions of grandeur but that's what they were taught. They have this idea that what they need to do day-after-day is sit behind an instrument and practise and then call some of the people that they know to say they are available for a gig. Then when they get to the gig they are happy to just play the music that they have worked so hard towards but the system does not provide for giving them back what they are owed for what they have put in. This goes back to the older musicians as well who would like nothing more than to sit with their instrument and play the music that they love. The issue with musicians is that we are trying to solve the problem that we have with being a business in the corporate world when we don't have the skills to do so. A lot of people believe that musicians should learn to manage themselves but I don't agree with that fully. I think there is a huge gap in the industry for music management and the musician himself should not manage himself. In my opinion, a musician who manages himself is half a musician because he should have the freedom to be creative without doing the actual managing. I do agree that musicians need to think of themselves as a business, though.

7.1.3 Case study number four (CS4)

EB: How many years have you been working and earning as a jazz musician?

CS4: About thirty years.

EB: What qualifications do you have in music?

CS4: I hold a Postgraduate Diploma in Music and a PhD.

EB: Are you a member of SAMRO?

CS4: Yes.

EB: What work do you do to generate your yearly income?

CS4: I am in full time employment at a university in SA. I also teach privately and perform at gigs.

EB: What type of gigs do you perform at?

CS4: The performance-related gigs I do, and would like to do more of, are related to my own music, which are very few. Generally most of the gigs that are available to me are at little pubs or restaurants, jazz clubs and then functions such as weddings and corporates.

EB: Do you perform at any festivals, showcases, theatre music and studio sessions?

CS4: I do a small amount of session work; probably because it's not my focus. Mostly popular music related or jingle work. I do play on some of the festivals and am often involved in other peoples' projects for special performances and showcases. I've done quite a bit of producing as well. At least one album a year for different people.

EB: What would you say is the majority of work available to you?

CS4: Bread-and-butter gigs, i.e., playing in the smaller venues around town usually stepping in as a sideman when the original band member can't make it (know as depping); playing solo piano in the foyer of a hotel.

EB: What is the average earning capacity for live gigs?

CS4: In my experience these gigs bring in roughly R5000 to R6000 per month and average between R500 – R600 per gig.

EB: You've been in the music industry for 30 years. Has that gig fee changed at all?

CS4: Twenty years ago I would be getting paid between roughly R112-R150 per gig and I remember also getting R300 for the same sort of work. I would say that it hasn't increased much in comparison to other disciplines.

EB: Do you know of any legal rights in terms of the live music industry?

CS4: I have some vague ideas of legal rights but my understanding is that there are no prescribed legal requirements for live performances. Most of it is a contractual obligation that is made between the venue owner or promoter who is booking the show/gig and the artists themselves, and it can vary tremendously.

EB: Are you aware of the Performers' Protection Act?

CS4: No.

EB: What rights/legislation do you think live musicians could benefit from?

CS4: That is a very difficult question. I tend to go against over-legislation because I have seen where legislation has ruined an industry such as the domestic workers' situation in SA. Now that there is so much legislation surrounding domestic workers, people are opting to avoid the situation by hiring workers from outside the country who don't have South African status and these workers then get abused. It's much like squeezing the balloon and the problem just goes somewhere else. Having said this, I am in favour of some form of legislation that would allow musicians to practise their discipline as in other disciplines, such as psychology for example. Qualified psychologists who practise psychology must register with the psychology association and then have to practise within the constraints of that association. In this situation there are certain minimum rates that apply but you then have the freedom to charge above that rate if you choose to. Being part of an association like this means that you have to adhere to certain conditions and principles. As a musician, being subscribed to a union would have advantages but these need to be good and healthy so that it is in the interest of musicians to want to be a part of a union because people are associated and affiliated with that union and there are benefits to being a member, such as medical aid for example. Also it would be beneficial if venue owners and people who book musicians register with the union so that certain conditions are applied for and certain rights are respected, such as musicians cannot play outside in the rain or facing directly into blistering hot sun, etc. However, this should not stop any musician from taking work that does not meet these requirements.

EB: Please describe the process for being booked for a gig. Please include various formalities depending on the gig (if necessary).

CS4: My experience is that I have burned my fingers on some bookings and those are the people I try to avoid. Generally speaking, it is a casual understanding between people whom you have had a long standing relationship with enough to trust that the money will come through eventually and that they have coordinated and sorted out particulars such as cancellation fees and necessary contracts with the people who have booked the band. That being said, I have been disappointed by people I know very well who, themselves, have been done in by big corporate agencies where cancellation fees haven't been paid out and the musicians have lost work by securing the dates for that particular job. I tend to

steer clear of working with people who I don't know/trust or who I'm not sure about.

EB: What method is used most frequently in booking you for a gig?

CS4: Text message.

EB: Please describe your experience of festivals/showcases/high profile gigs in terms of booking/money/contracts and any other issues.

CS4: Most of the festivals that I've done have required signing an eight or nine page contract with a lot of legal-speak relating to all kinds of conditions, such as behavioural, etiquette, playing certain hours, no show clause, broadcasting etc. All of this is built into the contract and generally I read them casually and sign believing that it will all be fine. The price structure for festivals varies radically and it has changed radically over the years. The fees for the main jazz festival we have here (in SA) have gone down by 500%. Now musicians are being paid a drastically reduced rate for an internationally focused gig that is on par with the fees for playing at certain restaurants in town. Bearing in mind that for an international festival there are usually extensive rehearsals and preparation that goes into that performance. There is also the tendency for these festivals to play the card that it is exposure for you as the artist rather than just paying the musicians to do what they do.

EB: Do you think there is a level of exploitation?

CS4: Totally. There is a radical level of exploitation. I do respect that some musicians have a bigger draw card than others and do deserve a better fee, but the sidemen who are on stage making the gig happen for the front man are getting paid miserably and are not being attended to in a decent manner. Unfortunately, I find myself being very reluctant to play for some festivals because of how they are run.

EB: Have you received royalties or additional monies from SAMRO?

CS4: Yes, I have. It's a yearly income but it's really very small amounts of money and very little accountability of whether I am really getting paid what is due to me. Where I have followed up on material that I have been involved in that has flighted overseas I've come to a dead end. It's very difficult because you have to

trust that SAMRO is paying you the correct sums and that people are submitting their playlists religiously. As a jazz musician it doesn't amount to much.

EB: Have you ever signed a contract when co-writing with other musicians that included specific royalty percentages?

CS4: Once or twice but the whole process is very vague. What is stopping me or anybody else to submit work that is not my own? It's all very vague. Where is the affirmation that this is me and this is genuinely my work? There doesn't seem to be a database where one can check what has been registered and make sure that if there are mistakes they can be rectified.

EB: Have you had any experience with previous attempts at a musicians' union in SA?

CS4: Yes. There have been several attempts locally but because it's a country-wide issue and not specifically a province or town-related issue, it would take some organisation. I think because there is such a disparity in skill base, as well as the type of musicians, it's been very difficult to get one voice that would allow people to consolidate as a union. The meetings I attended for a certain attempt became very politicised and they were very much attached to a specific and small group of people with particular interests.

EB: How effective do you think these attempts were, and why?

CS4: They weren't effective at all because musicians in general have in the past not been viewed as a recognised skill but as a hobby. It is not in the mindset of the South African people to recognise that music is an actual profession and a trade that they actually make money in. For classical musicians for example, within the context of an orchestra, there is much more discipline because it is an even field. Everybody has a skill to read and play music so there are a set of expectations, such as the time when the rehearsal will end because there is the risk of going into overtime pay. This kind of thing is more related to the UK system of regulations and seems to persist more in the educated discipline of music which is not what we as jazz musicians are involved in. Jazz is more a street culture form of music which is always seen as a resistance or struggle music and has now become the new flavour. Jazz hasn't really been accepted as being a functional discipline and I think that is why it has been so difficult to structure a

union with that in mind because everybody is so polarized in doing their own thing that it's difficult to get people to sing as one voice.

EB: How will a musicians' union add value to the SA music industry?

CS4: A good regulated union always adds value provided that the leadership is not abusing their role in that they are constantly, as a single voice representing to government and petitioning for recognition of what musicians do as a skill. Therefore being awarded accordingly and being treated accordingly. Basically being accepted into the mainstream trade base of SA. In the long term, music is a massive source of income for every aspect of the economy and companies within SA could benefit greatly. That regulation to some extent would actually boost the economy. A union would consolidate as one voice and allow for problems to be solved collectively where it would be more difficult to try and do so individually because of the union structure of tiered management.

EB: What changes can be made in order to assist, provide for and protect the rights of jazz musicians in SA?

CS4: Positive legislation is the key. It's very important that somebody can fall back on that. If there is good positive legislation then people who tend towards an abusive style of management will be bound by that legislation because the punitive aspects of it will more likely be on par with decent behaviour than otherwise. For human beings, if there is no form of punishment or fine attached to it it's just a free-for-all. Musicians need good, positive legislation that protects their rights.

EB: What are your thoughts about music business education in SA?

CS4: It's rare to find a creative musician who is also a good business person but they do exist. The corporate world is structured in such a way that we have business school and law school and all these disciplines in the real world. I think that the creative arts, unfortunately, is not seen as one of those disciplines. This has had a huge impact on how music has been incorporated into society. It is very important to get a consolidated business programme that would pull in some of the people that have made successes of themselves in the music industry in order to create a course structure that fits around the South African context. The focus should be that you don't have an imbalanced course where business

structures that relate to another discipline are tied together with a kind of flow diagram of meaning within which musicians can function. If we adopt that, the graduates from university who become the primary school teachers etc. will begin to engage professionally because that's how they have been trained. Then the corporate world will begin to recognise that that's what they're getting and, as that grows, all the problems that we are currently dealing with will solve themselves.

7.2 United Kingdom

7.2.1 Case study number one (CS1)

CS1 has worked in the music industry for twenty nine years and holds the following qualifications in music: Licentiate Trinity College London (L.T.C.L); Associate Royal Academy of Music Honorary (A.R.A.M); and Graduate Trinity College London (G.T.C.L).

EB: What work do you do to generate your yearly income?

CS1: Jazz gigs as a performer with my own band, as a member of other groups and guest soloist with house trios or big bands. Teaching in music colleges, schools and universities. Private tuition and workshops. Composing and arranging. Recording.

EB: What is the average earning capacity for live gigs?

CS1: Usually between £70 and £250 depending on size of venue and distance travelled.

EB: Do you know of any legal rights in terms of the live music industry?

CS1: I can only think of the terms specified in a contract that could be legally upheld.

EB: Please describe the process of being booked for a typical gig. Please include various formalities depending on the gig (if necessary).

CS1: I usually get booked for a gig via telephone, text or email. This may be resulting from me having sent a promotion package to a promoter or venue. The fee, date and line up of the musicians are then discussed. Once this has been agreed a

written confirmation from the promoter in the form of email or written contract is issued.

EB: Please describe your experience of festivals/showcases/high profile gigs in terms of booking/money/contracts and any other issues.

CS1: My experiences with festivals and high profile gigs have been similar to that of the smaller venues.

EB: Please describe a positive and negative situation that you have experienced with the MU. (Please feel free to include as much information as you are comfortable with. It will also be helpful to include situations you know of that don't necessarily involve you.)

CS1: Although I have no personal experience, I have heard through colleagues that the MU has been good at obtaining fees from promoters who have not paid musicians or for getting a cancellation fee when a performance has been cancelled. In the past, venues have had some financial help from the MU if all members of the band belonged to the MU. I remember having to forward to a venue the MU membership numbers of the musicians in the band. I am not sure if this still happens as it has been many years since a venue or promoter had asked for musicians' membership numbers.

EB: How does the MU add value to the UK music industry?

CS1: The MU has been very useful in the theatre and recording sides of the music industry by setting fee structures that are strictly adhered to. Because of the nature of how the jazz industry is run, it is very hard to have a similar fee structure. I think a lot of small jazz clubs would struggle to survive if this was enforced.

The MU also provides strong legal assistance to its members and is good at warning its members of venues or promoters who have had a bad record of payment.

EB: Do you have any further contribution to this research?

CS1: A lot of the jazz venues in the UK are run by teams of jazz enthusiasts who often struggle financially. A poor attendance to a gig could break the club. For this

reason a set fee structure could cripple most clubs. Fees negotiated between the club and performer are dependent on the status of the performer. A well known performer could negotiate a higher fee than a lesser known one as they can guarantee a bigger audience attendance.

The same could be said of travel expenses. A set structure could be financially crippling to some venues. When negotiating with a venue the fee would be inclusive of travel and any hotel expenses.

The organisation, Jazz Services, has been a great help in supporting jazz musicians. They provide a database of venues and promoters and also help financially with the funding of tours. They can also help with the funding of collaborations with musicians from other countries. The support of Jazz Services has been invaluable to British Jazz Musicians.

7.2.2 Case study number two (CS2)

CS2 has worked professionally in the music industry for seven years and holds a Bachelor of Music Honours degree [BA (Hons)] specialising in Music Production. CS2 is a member of the Musicians' Union (MU) in the United Kingdom.

EB: What work do you do to generate your yearly income?

CS2: As something of a "part-timer" I am fortunate enough to have the benefit of seeking paid musical work alongside my full-time job as a lecturer in the Further Education sector. The majority of my employment comes from session work, in both live and studio contexts, but I also take jobs as a pit-band musician and as a musical improviser for an improv comedy troupe.

EB: What work is available to you?

CS2: My experience is mostly drawn from my home city and the surrounding area. Jazz is not something which draws a large crowd in the city, and there is no jazz-specific venue for musicians to call home. In my home city, jazz is mostly confined to a few select restaurants and bars on occasional days as "background" music. In my experience, venues will be happy to take bookings

through the year, and availability is naturally more plentiful in some places than others.

EB: What is the average earning capacity for live gigs?

CS2: Typically, venues will offer between £150-£200 for a two-to-three-hour set, depending on the day, season and any extraneous events. Between the usual quartet this breaks down as to between £37.50 and £50 per person. Once a rapport has been established with a particular booking agent they will often offer further slots to a band, rather than having to be asked. The venues where jazz is performed usually have a fixed set of bands who rotate performances. As the genre is something of a rarity in my home city, not many bands exist in the city itself, often making the selection of acts rather predictable.

Working further afield, the scope for higher earnings becomes far more substantial. A friend of mine works as a solo pianist playing standards for various functions and earns a little under £200 to play for a wedding and drinks reception. Similarly, a jazz trio I know charge £650 for two one-hour sets.

EB: Do you know of any legal rights in terms of the live music industry?

CS2: With regard to legal rights, it is rare for Musicians to have to sign any sort of contract for day-to-day gigs with promoters. The “gentleman’s agreement” seems to cover the bases well, with the knowledge that if an act lets the promoter down, they are unlikely to be booked again. Conversely, promoters can get bad reputations amongst the tightly-knit music community if they renege on a booking with a band, so the process tends to work on a casual basis. For higher-profile gigs in venues on busy nights, where the band is a focus rather than a background “filler”, it is reasonable for artists or bands to enter into a contract with the promoter. Normally this will stipulate aspects such as whether payment is guaranteed, a door split or a combination of the two, as well as specific times and length of set(s).

For larger-scale gigs, however, musicians are likely to need Public Liability insurance (PLI) for functions and events. Essentially, this is to protect the musician and the host from any legal action taken against them from a member of the public as a result of any problems or incidents caused by the event.

Finally, if covers are being performed, bands will need to ensure that a copy of their set is given to the promoter or venue staff to ensure that the appropriate royalties can be filed through the ¹⁰Performing Right Society (PRS for Music). Bands should also check that venues are PRS-registered before accepting gigs.

From the perspective of the venue, there are several legal conditions that have to be fulfilled. These often differ slightly in certain boroughs or districts, but are broadly governed by UK law.

Firstly, as stated above, venues should be registered with PRS for Music and ¹¹Phonographic Performance Limited (PPL) to legally host acts that play covers and to play recorded music, respectively.

Secondly, since the introduction on October 1st, 2012 of the Live Music Act, small venues (those with a capacity of under 200) no longer require a license for live music. This has freed promoters and venues from the red tape and form-filling which had become the norm until that point. The act has also had a recent proposal to increase its audience threshold to 500.

In a majority of London boroughs, promoters and licensees must submit a risk assessment form (Form 696) to the Metropolitan Police 14 days prior to an event. This has become somewhat controversial due to it calling for the names, stage names, addresses and telephone numbers of all parties involved with the event itself. Originally, the form also required the genre of music to be listed alongside the likely ethnicity of the audience. This, unsurprisingly, led to accusations of racial profiling, especially among London's black and Asian population.

One of the major issues associated with performing in small venues, though it is mercifully in decline, is the "pay to play" mentality. This is where the promoter or licensee would sell the artist tickets to their own gig, transferring the impetus of the act of promotion to the artist/band. As a result, if fewer tickets were sold than necessary, the artist could end up worse off after the gig than before it had even been booked. There has always been an expectation for musicians to promote their own gigs, and it is still implicit that neither party should be idle in their

10 Please see p. 36, 5.3.

11 Please see p.36, 5.4

duties, but this process still exists in places, particularly with younger artists who feel compelled to start on the circuit and see this as their only way forward.

EB: Please describe a positive and negative situation that you have experienced with the MU. (Please feel free to include as much information as you are comfortable with. It will also be helpful to include situations you know of that don't necessarily involve you).

CS2: The Musicians' Union carries immense value for me as a musician, and I find myself able to take advantage of a large number of benefits. Annual membership costs £183 per year, which is fully tax-deductible. Furthermore, students can join for an extremely affordable £20 per year. Membership grants all members complimentary PLI up to the amount of £10 million, as well as instrument insurance up the value of £2,000. The MU also grants legal assistance to its members, giving musicians the opportunity for contracts to be scrutinised and for representation in court. Furthermore, they keep databases of performers ready for potential clients – as such, if a band are MU-registered, they are likely to gain more work through the union.

I have personally found the union's publications to be very useful in terms of keeping up with the professional music world, which I am only a part of on occasion! I have taken their handbooks, leaflets, newsletters, etc. to my students at college to give them a more contextual insight into the industry and to encourage them to become members themselves. Furthermore, these publications are specifically written for certain sectors, such as Session, Theatre, Teaching, Jazz, Equalities, etc.

I have had no negative experiences with the MU, nor has anyone I have spoken to. This is not to say that this is true across the board, necessarily, but it certainly pertains to my own network of musicians. One benefit that has disappeared from members in recent years was a tiered membership fee. Specifically, if a musician earns less than £16,000 from music per year, they could join a lower band of membership with a reduced subscription rate. But, by the same token, the music industry is still growing and, as mentioned previously, rates are tax deductible.

EB: What are the MU's strengths and weaknesses?

CS2: In terms of weaknesses, the MU is much like any other labour union in that the majority rules. The MU employs heads of sectors that are democratically-elected by its members, and polls are often taken with a view to determine how the union should act in response to a given issue, but members with a minority voice can often go unheard.

For the music sector as a whole, the MU plays a hugely important part of negotiating terms and conditions of performance and rehearsal between musicians and their employers. For example, a selection of agreed rates and performance/rehearsal conditions for specific UK theatres and venues can be found here:

<http://www.musiciansunion.org.uk/advice-downloads/playing-live/2012/02/01/live-rates/>

Additionally, with regard to legislative proposals both locally and nationally, the MU have always fought to seek fairness for musicians. For example, the aforementioned Form 696 was strongly opposed by the MU, among others, resulting in the form being amended.

EB: Do you have any further contribution to this research?

CS2: The biggest problem facing Jazz musicians in the UK is not the violation of performers' rights; rather, it is the lack of cultural appreciation of the genre itself. Frankly, there is little that the MU could do to alter this perception. If anything, it is the duty of the UK Arts Council to develop this matter, rather than that of the union. As previously stated, I personally find membership to the MU to be hugely valuable. I feel safe, protected well-resourced and able to explore ways in which I can improve and expand as a musician.

7.3 Comment by author

From these case studies it is apparent that there are many similarities between the UK and South African situations. It is apparent that the similarities are in earning capacity and job opportunities regardless of one's qualification and the necessity for utilising many skills within the job scene in order to sustain a living. The indefinite differences are the lack of support in the SA system with regards to legislation and a musicians

union and the question is then raised as to whether other musicians in SA share these feelings. Both case studies from the UK express positive feelings towards the MU and the role it plays in their working life.

CHAPTER 8

Survey

For a period of two months the author hosted an online survey targeting jazz musicians in SA. The survey consists of ten questions and gathered a total of fifteen responses. While the sample is small and generalisations cannot be made, some strong indications emerged. The author attempted to host a concurrent survey for musicians from outside SA. Unfortunately, the international survey was poorly received and would make no viable contribution to this research.

8.1 Survey questions and responses

8.1.1 Questions 1, 2 and 3: Profile of Respondents

Initial criteria for the survey include establishing estimated age group, position within the jazz music industry and period of involvement as a working jazz professional.

Of the fifteen respondents, the majority (66%) are between the ages of twenty five and fifty years old and the remaining 34% are under the age of twenty five. The majority of respondents (40%) are jazz educators and working musicians while 20% are working jazz musicians only. The remaining 40% are either studying at a tertiary institute or are all of the above.

The majority of respondents (53%) have worked in the jazz music industry for less than ten years and 40% for more than ten years but less than twenty five years. One respondent has worked in the jazz music industry for more than twenty five years.

8.1.2 Question 4: Have you ever completed any formal business/business of music studies in SA? (Apart from component courses like the SACM, UCT semester course 'Business Management for Musicians' included for undergraduate candidates)

The responses to this question revealed that the majority of respondents (thirteen) had no formal business education. One was in the process of pursuing a course in the US.

In the case of one respondent, even having completed the semester course at UCT he/she found more value in published resources and self study:

No, but I have accounted for this by attending music conferences and trade fairs as well as reading Donald Passman's book 'All You Need To Know About The Music Business', and Jonathan Shaw's book 'The South African Music Business'. I have also collected documents from the web. Basically self-study. I found the Business Management for Musician's course irrelevant compared to what I have learnt since. (Respondent 11)

8.1.3 Question 5: Do you see yourself as a business or as an artist?

It is interesting to note that the majority of respondents (nine) view themselves as functioning as a business and artist simultaneously. Two viewed themselves only as a business. This finding seems to indicate that there is a strong awareness amongst jazz musicians of the need to employ business practices in their profession.

I'm an artist who is also a business woman and has to think strategically and be business-minded. The only difference to any other boutique business is that my product is me, as opposed to something inanimate/edible/etc. (Respondent 6)

I see myself as both, having both will enable me to be more active in the industry as a business women. Working to not only promote myself as an artist but stream into having artsit [sic] work under my label or name. (Respondent 9)

Both, if you're dealing with money then you're dealing with business. (Respondent 11)

Taken together, the responses to this and the previous questions seem to indicate that there is a dire need for effective business training for jazz musicians.

8.1.4 Question 6: What is the vision you have for yourself and sustaining your career as a jazz musician?

None of the respondents saw only performing jazz as a viable livelihood. The majority expressed the desire to perform but identified the necessity of being diverse and adopting many roles within the music industry in order to sustain a living, thus exhibiting a fairly pragmatic and practical view of the reality of what it takes to be a jazz musician in SA:

I hope to create a career for myself, both as a performer and as a writer. I would hope that through my writing I would be able to gain an income in the form as royalties (obviously also branching out from into popular music) and sync deals with television and film. As a performer I would like to create and perform original material and go on tour/perform at festivals to supplement my income. (Respondent 2)

I cannot sustain a career as a jazz musician, playing jazz solely. I try to create projects with accessible music (electro-dance and world at this point) and add jazz elements/fusion elements for the live performance. I want to be happy performing and for this I need the people listening to feel the music and at the same time introduce them to musical innovations they were not exposed before. I am also involved in music library composing different genres including jazz and I teach jazz piano in two schools which gives me an extra income. (Respondent 5)

I would like to make enough income to support myself and future offspring, and I'd like my income to come primarily from touring and visiting teaching opportunities. (Respondent 6)

I would like to be able to sustain myself financially as a jazz musician and not have to do too many pop gigs to get the bigger salaries. I think that jazz is my ultimate passion and I would like to be a part of educating young jazz musicians in things like improvisation and arrangement. (Respondent 14)

Three of the respondents indicated that they had no interest in a career performing jazz:

I do not intend to focus on sustaining a career as a jazz artist. I'm moving into another field altogether. At present, performing jazz is very enjoyable, and is helping me to fund other initiatives, but my focus is elsewhere. (Respondent 7)

I am in permanent employment at tertiary institution.(Respondent 8)

I plan on being an educator and then using music for healing and starting my own business. (Respondent 12)

8.1.5 Question 7: What do you think the purpose of a musicians' union is and how do you feel you should/would benefit from being a member?

The majority of the participants agreed that a musicians' union would be of value and importance in South Africa. Their responses included a range of ways in which musicians could benefit from such a body, including proper working conditions, ensuring reasonable gig fees, networking, providing important information, legislation and lobbying government, and discounted medical insurance and other financial support:

I think the purpose of a musician's union should be the protection of musicians. Making sure that they are not exploited, and to make sure they are able to sustain themselves financially through their musical endeavours. I feel I should benefit from this protection, being part of the union, in terms of distribution of royalties, and having a standard, fair rate for session, gig and writing work. (Respondent 2)

In its simplest form, to ensure that there are better working conditions for musicians at venues, as it relates financially [sic], etc. Furthermore, to create a better relationship and ultimately a better legislative view of a musician with government structures and organisations. Membership benefits could range from a number of practical issues, partnering with various companies to create benefits for musicians. (Respondent 4)

Also could get medical aid and insurances at cheaper rate if we all belong to an organization. Most musicians do not have medical insurance and the ones who do have struggle a great deal to pay for it. ... Facilitate collaborations with other musicians at a National and international level. Also to build a data base with all sort [sic] of information that pertain to musicians and the music industry. (Respondent 5)

At least one respondent expressed a wider view than only that of the musicians themselves:

I think a musician's union should take on the responsibility of systemically integrating the music industry into the greater economic structure in which it exists. In other words, it should not only be concerned with "musicians [sic] rights" and the enforcement of these, but rather develop an understanding of the changing environment of the music industry locally and internationally, and develop fluid, multi-perspectival strategies that integrate the music business into the greater environment, so that all stakeholders may benefit. (Respondent 7)

However, a few expressed reservations, particularly in relation to SA:

I don't think it would be useful in SA as the pool is too small and expertise level is too low. It will simply add bureaucratic weight to the process of being a musician. At present it is flexible and fairly simple. If government actually recognized music as legitimate trade and supported the orchestras, ballet and other larger bodies, then yes maybe an organization such as a union would prevent foreign and other interesting musicians from playing at will in our clubs and venues... Is this a good thing? Not sure? I don't see that unions have been productive in our economy in any way and are open to abuse and money hungry managers. Maybe a [sic] affiliate body as is found in medical practice which determines basic business practice might be useful but then again, we will have to subscribe to earning what is determined by that body. No more R3500 gigs or low paid fun gigs that don't [sic] meet union rates.... tricky when you start trying to organize people. (Respondent 8)

To represent musician [sic] interests. I don't think it would work in SA. (Respondent 13)

8.1.6 Question 8: Do you feel there is a need for a musicians' union separate from the Creative Worker's Union of South Africa (CWUSA)?

In the first place, it is apparent from the responses that some participants were unaware of CWUSA and its role as inclusive of musicians:

I'm not to [sic] aware of the CWUSA and what they do. I would need to find out more about what they offer and how it practically works out.
(Respondent 4)

I did not know CWUSA existed.. I suppose so, I am not sure what CWUSA does. I only knew about the Western Cape Musicians Association, ...
(Respondent 5)

However, the majority of the participants agreed that there should be a separate musicians' union. Their opinions are well summed up in the following:

I feel there is a need for a musician's union as the music industry is unique in the way that it operates. For example, there is [sic] often more people involved in the creation of a musical work (i.e. lyricist, composer, arranger, producer, musicians) and each musicians' [sic] function in this creation has different parameters and skill sets involved. Therefore each role should be more clearly defined and the rights should match this. (Respondent 2)

Yes, because too many musician rights are not being supported enough. It also ensures that musicians actually make an income because there are too many people who don't buy original music because there hype around downloading off interenet [sic] sources. (Respondent 9)

8.1.7 Question 9: If music business courses were available at any institution in SA (i.e. not only tertiary) would this be beneficial for you and do you think the music industry would change as a result?

One response to this question was: "No and not sure". Every other respondent agreed that music business education, whether inclusive of high school or focused solely on tertiary education, would be of great value to the growth of the music industry in some way.

I think the music industry as a whole would benefit from such courses, as musicians would be more empowered to make sound business decisions

based on their music, which is usually a more emotionally driven pursuit. (Respondent 2)

I think it would, as most musicians, both (ones who have not studied or you have) ends [sic] up doing their business aspect of music by trial and error. Without knowing exactly how to go about things. I think music courses would be highly beneficial. (Respondent 3)

Absolutely. It will definitely create more practical knowledge as to how the industry works and how the artist can exercise more creative control and ultimately financial control over their creative works. (Respondent 4)

I think music business courses are useful and should be offered at a secondary level as well as tertiary. I'm not sure the industry would change as a result but certainly smaller industry genres (jazz, classical, etc.) could change and grow. (Respondent 6)

Yes it would be because it would equip us growing musicians on how to keep our name brand alive and realise the other opportunities [sic] there are that are currently going and not yet discovered to make money in the industry! so that example if your main focus is performance you can stream into developing a record label and have new talent under your name and keep yourself active in the industry. (Respondent 9)

Yes. Artist's [sic] need to be able to think of themselves as a business and how to deal with the corporate world. (Respondent 10)

If I were still in high school and I had the option of taking Music Business as a major I would consider it. However, I believe that you could just study general business instead and apply that to the music industry. ... However, if you do specifically go into music business studies through internship programmes and generalised study you will eventually get professionals working within the industry instead of people with personalised credentials. These professionals will also be passionate music consumers and musicians themselves and therefore may even do a better job because of this. (Respondent 11)

While one of the respondents was in agreement, they expressed the view that the course they had done did not live up to their expectations. (This was also expressed by Respondent 11 in Question 4.):

I'm not sure if it would be beneficial to me, but I definitely think it would be beneficial (depending on the relevance and content of the courses, of course. I feel this needs to be stressed because I did a course on music business during my BMus (Bachelor of Music) degree which was not relevant or very useful). I think the industry would most certainly change if the artists involved in it had a better understanding of the business of music, and of the industry and their place within it. (Respondent 7)

8.1.8 Question 10: What is your impression of the activities of the music business at the moment and what do you think could change?

Each response to this question was different and the content covered various angles of what the music business is now and how it could change. Some similarities that come up are support from and better communication with government, musicians as entrepreneurs and thinking like businesses and the lack of and need for music management (or arts management) in SA. The following responses represent the range of views expressed:

It's growing slowly. There could be more support from government.
(Respondent 1)

At the moment I feel that the music industry in South Africa is a free for all. There are no set standards in terms of what a musician is worth and musicians are constantly being taken advantage of, which leads to an unhealthy environment which keeps the music industry here operating at a much lower level than it's [sic] international counterparts. (Respondent 2)

Not enough transparency in terms of where money is generated. There are more and more music schools and projects created, but not enough music business courses to educate artists on how to market their creative work.
(Respondent 4)

Well, I know there is money to be made in corporate entertainment and in synchronization mechanical rights through music library. Maybe also the organizers of festivals who get good sponsorship or tender from the government to organize public concerts. Certainly the musicians are not the ones to get much money out of festivals. I assume changes can take place depending on the economic situation of the country in the future. (Respondent 5)

I think the music industry is in a state of great change and uncertainty. New models are needed to deal with realities like free downloading, the gradual loss of power of the major recording labels, the influence of social media, etc. Individual bodies (whether artists, labels, CD stores, etc.) within the music industry that are resistant to these changes could likely find themselves unable to succeed. (Respondent 7)

The music business is very unstable. As a potential artist who is wanting to make this a career the music industry does not provide one with a sense of stability. Getting bonds and loans prove difficult and while one understands artists still need security which is not provided at this point in time. (Respondent 10)

The music industry in South Africa is still young. The ethic of how the industry works exactly is not evident to the average person and the professional entities that exist can only cater for a minority of musicians artistic output therefore the majority of the South African music industry is based upon freelance entertainers working on a cash-on-hand basis. The way the industry works predominantly internationally would be the business cycle of the artists creating a product, the product is distributed and marketed by the record label and spun by publicity agents, the product lives its lifespan through the media, retail and live performances and publishers collect royalties. Firstly I think that young people in the music industry need to educate themselves on the practices of the music business before they practice it. Secondly, I think that all people involved in the business cycle should be ethically sound and perform according to standardised criteria - whether it is a promoter or publisher negotiating splits. Thirdly, I think there should be open communication in the music industry amongst different parties so that cultural activity can happen i.e.

more music, festivals, events, gigs means that there are more people getting into music and that means money. Finally, I think that South African musicians need to think out of the box in order to achieve success in the industry. Just because South Africa does not work at an international scale or with the same methods does not mean that there is no opportunity to be made. It just means that the artist needs to create their own path towards making revenue in music, which means that they will probably have to be very good at managing themselves. Being a musician in South Africa means you must be a good entrepreneur. (Respondent 11)

Its [sic] all about who you know rather than your talent, its [sic] about being what the market is looking for. I have seen many talented and gifted musicians struggling to make ends meet, while 'less' talented musicians get huge media coverage. I feel that if the government supported musicians and the arts more, then being a musician would be more lucrative as a job and in raising a family and living a comfortable life, rather than pay check to pay check. (Or gig to gig). (Respondent 12)

I think in jazz specifically there are not enough establishments dedicated to solely jazz music. And I mean not restaurants, just jazz listening clubs. Something like The Mahogany Room (in Cape Town) is a perfect example of what South Africa needs more of so that young jazz musicians have more opportunity to get out and play to people who actually want to listen to them. (Respondent 14)

Musicians are running their own businesses now, which is fine, but there is a gap for promoters and managers who could take it to the next level. (Respondent 15)

CHAPTER 9

What the jazz musician needs to know to function as a business in the live music industry

The words entrepreneur, business person and company are not terms generally associated with the jazz musician, or in fact, any musician. Musicians begin their journey in the music industry as purely artists without much (if any) focus on the business of being an artist and therefore, many do not see themselves as a small business or enterprise. The few who do make the connection have little knowledge of the business they are in. This misunderstanding of entitlement has been passed down through the generations from seasoned musician to youngster; and music industry professionals thrive on this restrictive mindset to manipulate situations to their advantage.

Without acknowledging the power and necessity of business, the musician will remain ignorant to the marriage of business and artistry. The cycle of this defeatist mentality of 'that's just the way it is' will continue if nothing is done to amend it. The undeniable truth is that every jazz musician who trades his/her performance for remuneration is dealing in business and is by default expected to function as an entrepreneur or business person or company with sufficient business and financial skills. The fact that many do not hold the confidence that comes with gaining the knowledge and understanding of running a business renders the question of what can be done to address this issue and where one begins. The author is of the opinion that musicians should enter their working lives fully aware of their position for making a living from music and should understand how the business works. In most businesses it is vital to understand the risks and acquire the financial skills before any serious money can be made. For example, if the business choice of an individual is to run a shoe shop, before renting space, purchasing stock and opening doors, research would be conducted into how that business operates (Passman, 2011:3).

The most significant challenge is the dispute amongst musicians themselves as to whether a true artist should be considered a business.

9.1 What is a typical jazz musician?

For the vast majority of musicians and, possibly especially jazz musicians, a combination of various jobs within the music industry is an absolute necessity for survival. A jazz musician will find him/herself with a combination of work including teaching/lecturing, composing, arranging, performing, recording, managing a booking agency, producing, working as a music publicist, and industry-related opportunities. The fundamental truth is that there is no such being as a typical working musician.

For the most part, jazz musicians in South Africa function as freelance professionals who live from-hand-to-mouth, mostly accepting whatever paid work comes their way. It is vital to understand and accept that the industry and the business world view musicians as independent contractors. Being an independent contractor means that the normal benefits and protection that come from being an employee do not apply. Labour legislation, unemployment funds, health and medical insurance and pension plans become the sole responsibility of the freelance musician. The author is of the opinion that it is in the best interests of the young musician for tertiary institutions such as the University of Cape Town to encourage this way of thinking and therefore, application into living and working life from the very first year of study through to graduation of a three-or four-year qualification. The jazz musician (and all other genres within the South African College of Music [SACM]) are equipped with skills, strategies and workable tools that are already in practice, such as an artist website and other social networking sites as part of digital marketing, personal finance and business finance, project management (including business plan) for the next step into the market. For the musician who is self-taught and never attends a tertiary institution, the role and purpose of a musicians' union (refer to Chapter 5) would then be the support mechanism and advisor on these matters.

9.2. What does the jazz musician need to know to operate as a business?

Starting a business based purely on the desire to express creativity is a venture that is at risk of exploitation and failure. In the entertainment industry, professionals understand that there is always a risk that the product they are invested in may not succeed. However, this risk is calculated and investigated and every attempt to prepare for success is also a consideration. Most musicians, especially jazz musicians,

do not understand the business they are involved in and few prepare for success or failure. Moreover, there are certain obligations that are necessary for small businesses, including jazz musicians, to prepare for successful business practice.

The following information is drawn from the author's experience at the Business Acumen for Artists (BAA) course 2012. The author considers the following points to be of great importance for the jazz musician to adopt and practise.

9.2.1 Personal and business finance planning

It is essential that new/young musicians begin their working lives in the music industry with a healthy perception of, and relationship towards, personal finance. For some, personal finance practice is knowledge passed down from parents and guardians with years of experience earned through trial and error. Unfortunately, not everybody is in this fortuitous position and many fall short of these practices until late in life, if at all.

As a freelance working creative, the jazz musician must acknowledge that they are not only solely responsible for their current livelihood but also for their retirement. Thus it is in their best interests to begin their working life with certain structures and habits already in place. The mental shift from 'artist only' to 'artist is business' must include the separation of personal finance and business finance. The most valuable practice to begin with is to encourage and ensure that cash payments for services rendered are collected through electronic payments into a bank account in the musician's name. One step further is to open a completely separate bank account in the name of the business, e.g. Joe Soap's business account could be named Soap Entertainment or JS Music, in order to establish separate personal and business accounts. From the latter the musician would then pay him/herself a monthly salary which will cover their personal expenses and isolate funds in the business account that will be used to build the business by covering business expenses.

The goal with this methodology is to start keeping a record of all income from paid work in the music industry as proof to the bank that, as a self-employed, sole proprietor or independent contractor, you have been earning a certain amount annually from a certain age. Keeping a record of your financial history tells the financial story of your business (Kew, 2012). When the time comes to apply for home or vehicle finance, or any loan, including a business loan, the bank has a clear record of your earning

potential, which directly affects your risk profile and therefore your eligibility for your application to be successful.

A common misunderstanding amongst musicians with regard to existing as a business is that they must be registered as a company. Although musicians have the right to register and function as a company, the costs incurred are unnecessary for most who fall below a certain income bracket. There are specific legal obligations that musicians must adhere to in terms of functioning as a business. Musicians in SA are required by law to pay tax, as does every other working professional. Most musicians can be registered as a sole trader (proprietor) or independent contractor in order to fulfil this obligation. A sole trader is the simplest form of a business. The individual and the business are one-and-the-same therefore resulting in all debts/assets accrued by one or the other being the full responsibility of the individual/business (Africa Centre, 2008).

With digital technology replacing the previous methods of lengthy pen-and-paper trails, there are many options for submitting tax returns, keeping track of income and expenditure and managing one's financial life from desktop, tablet and mobile phone. It is easier now than ever to run a small business with just one of these devices and an internet connection.

9.2.2 Costing and budgeting

A surprising question was posed to the BAA class of 2012 by senior lecturer, Jacqui Kew: Can you afford to work as an artist? This opening line is one the author had never considered but understands now to be an incredibly powerful wake-up call for any working creative. The reality for most musicians is in the thinking that making money from music will happen slowly at first until their 'big break' when somebody influential will discover them and launch their career into the world with six-figure gigs. This may be true for some musicians who go on to earn somewhere in the millions but for these select few, the administrative duties that are required for successfully managing the financial life of their business would fall to a hired business manager and even so, many of these artists choose to remain ignorant of how their business is run, as well as the business of music in general (Passman, 2011: 41).

The average working musician is also a one-man/woman business and will therefore need to master a few basic aids for financial management. The answer to “Can you afford to work as an artist?” is in direct relation to “Where does the money come from and what does it mean for my business?” (Kew, 2012). The answers are revealed in the financial history of the business. By keeping accurate records in a functional format the working musician creates a visual representation of what figures are coming in and going out. These records provide proof for the working musician in order to contemplate proactive decision making. The alternative would be living from one payment to the next, unaware of one’s actual earning potential and little/no control of one’s finances.

Possibly the most critical question for the jazz musician is: “How much money do I need to make to start earning my first rand?” There are a number of contributing factors to the non-record keeping musician falling prey to their own naïvety and ignorance of their finances and earning potential. Most musicians do not practice good administrative duties such as invoicing. The necessity in invoicing is not only for the purposes of year-end tax returns but in keeping track of money coming in. It is not uncommon for musicians and artists in general to be booked/hired for a gig/job that results in either late payment, early payment or an advance deposit with the balance settled on completion of the gig/job. Without correct record keeping it is easier to confuse which income is connected to which job, particularly for musicians with many jobs running concurrently.

Similarly, setting up a monthly balance sheet (asset register) will assist musicians to keep a record of money going out on equipment e.g. amps, instruments, stage-wear, etc. by clearly documenting the useful life of all assets (related to depreciation of goods). This assists in calculating how much is needed to cover monthly/yearly expenses and therefore also contributes to establishing what the musician’s time is worth (costing).

It is not possible to include all points of importance for the jazz musician functioning as a business within this dissertation. Additional study would include the ever evolving digital media and purpose of digital marketing for the music business entrepreneur. Other points for research are project management relating to the jazz musician, mastering the art of negotiation, understanding target markets and branding and image as a tool for music business.

CHAPTER 10

Conclusion

It is clear from the direction of this study and its findings that there are many unanswered questions pertaining to the live music industry in South Africa. Although the history of this industry in South Africa is intertwined with its political and cultural history, the focus of this research was not to map out this connection. Instead, it was found that, when comparing the working life of the jazz musician to those in another country, as was done here with musicians in the UK, there are clear similarities and meaningful differences. The significant differences concern the support and functioning of the Musicians' Union, the PPL and the PRS in the UK, compared to the situation in South Africa where musicians are struggling to voice their opinions and needs because they are not being properly represented in government and therefore little progress is being made in positively changing musicians' rights. Having said this, SA does have organisations such as SAMRO, POSA and the latest addition, CAPASSO¹², who are focused on specific areas of the music industry and are fulfilling their role in the industry. However, these organisations do not have the same impact and purpose as a union.

The possibilities for the future development of the live music industry in South Africa and specifically how the business side can develop are positive. For example, the 2013 report by SAMRO and Concerts SA entitled *Song Lines: mapping the South African live performance language* (Ansell & Barnard, 2013)¹³ provides encouraging information on the developing live music scene in SA with specific regard to the venues themselves. The findings in this report also highlight the areas that are not developing and which need support and further consideration. The report goes on to offer recommendations in this regard.

There appears to be an awareness amongst musicians and industry professionals about the rights of musicians and the need for change and growth in the music business industry. For example, the SA initiative Music Exchange (ME) is a

12 COPASSA is the newly formed (as of March 2014) Composers Authors and Publishers mechanical rights agency in South Africa.

13 This document is available from SAMRO and was first brought to the attention of the author at the 2014 Music Exchange initiative (www.musicexchange.co.za).

conference-style annual event which consists of a board of members who are “industry thought leaders who have made a success of their careers” and who want to share their success stories by sharing their knowledge (Music Exchange, 2014a). The initiative refers to itself as “a hub which attracts local and global entertainment industry leaders in support of job creation and economic development in Africa and abroad” and provides “creative workers with practical tools and insights into the music, film and entertainment business so that they are better equipped to make a success of their individual careers.” (Music Exchange, 2014b). This is an encouraging development in terms of drawing attention to various aspects of the creative workers industry which includes sparking discussion and initiating some level of action for positive change¹⁴.

The live music industry and the entertainment industry at large is constantly evolving as new developments are discovered and more efficient practices initiated. It may be that some situations will remain unchanged, but there are signs that the industry is aware that future growth should include improved efficiency in sharing information about the business of music, and some form of unionisation which will lead to better communication with government, resulting in more positive opportunities for change.

¹⁴ The author attended Music Exchange 2014 and witnessed the open discussion between POSA and representatives of the Department of Trade and Industry (DTI) where the issue of the Needletime debate was being discussed and disputed. The need for musicians to be represented in government was also discussed, with ME board member, Sipho Mabuzo, volunteering to be that representative.

REFERENCES

- Academy of Sound and Engineering, Johannesburg. Available:
<http://www.ase.co.za/courses/course/category.php?id=17> [24 April 2013].
- Africa Centre. 2008. *The artists handbook a guide to the business of the arts*. Africa Centre, Cape Town. Available:
www.artsinafrica.com/uploads/2011/07/The_Artists_Handbook.pdf [25 June 2013].
- Alfreds, D. 2009. *More money for musos*. Available:
<http://www.news24.com/Entertainment/SouthAfrica/More-money-for-musos-20091112> [28 June 2013].
- Ambert, C. 2003. *Promoting the culture sector through job creation and small enterprise development in SADC countries: The music industry*. International Labour Organisation, Geneva. Available: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDYQFjAB&url=http%3A%2F%2Fwww.ilo.org%2Fwcmsp5%2Fgroups%2Fpublic%2F%40ed_emp%2F%40emp_ent%2F%40ifp_seed%2Fdocuments%2Fpublication%2Fwcms_117682.pdf&ei=Kto8UdCTCcXe7AaTpIGoDQ&usg=AFQjCNGpM7HOQk1D49XlItUEyxKdo-_uaA&sig2=OOa7aLY-tRw8DtLY9nDCw&bvm=bv.43287494,d.ZGU [23 Jan 2013].
- Anglo Info: the global expat network South Africa. n.d. *Business structures*. Available:
<http://southafrica.angloinfo.com/working/starting-a-business/business-structures/> [26 June 2013].
- Ansell, G. & Barnard, H. 2013. *Song Lines. Mapping the South African Live Performance Landscape*. Available: www.samro.org.za [8 March 2014].
- Campbell, A.W. 1994. *Entertainment law: cases and materials*. 3rd ed. San Francisco: Austin & Winfield.
- Clarence, W. 2013. Business management for musicians. [MUZ1326F Course outline 2013]. South African College of Music. University of Cape Town. (Unpublished).

- COPA. n.d. *Higher Education Certificate in Music Business*. Available:
http://www.copasa.co.za/index.php?option=com_content&view=category&layout=blog&id=155&Itemid=125 [24 April 2013].
- COPA. n.d. *Music Business School tutors*. Available:
http://www.copasa.co.za/index.php?option=com_content&view=category&layout=blog&id=9&Itemid=19 [24 April 2013].
- CAPASSO formed at Music Exchange. Available:
<http://www.bizcommunity.com/Article/196/480/110815.html> [11 May 2014].
- Halloran, M. 1991. *The musician's business and legal guide*. Prentice-Hall Inc.
- Hatitye, E. 2009. *All is set for needletime administration*. Available:
<http://www.posatrust.org.za/media/media.php> [28 June 2013].
- Holt, F. 2010. The economy of live music in the digital age. *European Journal of Cultural Studies*. Apr 13: 243. Available via EBSCO Host:
<http://ecs.sagepub.com/content/13/2/243.refs.html> [30 March 2012].
- Kew, J. 2012. Business Acumen for Artists. Financial planning. [BAA2012] Graduate school of Business. University of Cape Town. (Unpublished).
- Kukacki, K. & Croft, R. 2005. *Paying the piper: a study of musicians and the music business*. Published online: John Wiley & Sons LTD. Available:
<http://onlinelibrary.wiley.com/doi/10.1002/nvsm.27/abstract> [28 March 2012].
- Music Exchange. 2014a. *About Us*. Available: <http://musicexchange.co.za/about-us/> [18 May 2014].
- Music Exchange. 2014b. *Programme 2014*. Available:
<http://musicexchange.co.za/programme-2014/> [18 May 2014].
- Music Industry Online. n.d. *Music business industry course at SAE*. Available:
<http://www.mio.co.za/article/music-business-short-course-at-sae-institute-2012-02-22> [24 April 2013].
- Musicians' Union, United Kingdom. 2013a. *About us*. [Online]. Available:
<http://www.musiciansunion.org.uk/about-us/> [29 Jan 2013].
- Musicians' Union, United Kingdom. 2013b. *Campaigning*. Available:
<http://www.musiciansunion.org.uk/about-us/campaigning/> [29 Jan 2013].

- Musicians' Union, United Kingdom. 2013c. *Help in times of need*. Available:
<http://www.musiciansunion.org.uk/about-us/help-in-times-of-need-2/> [29 Jan 2013].
- Musicians' Union, United Kingdom. 2013d. *How the union works*. Available:
<http://www.musiciansunion.org.uk/about-us/how-the-union-works-2/> [29 Jan 2013].
- Musicians' Union, United Kingdom. 2013e. *MU launches Live Music Kit*. Available:
<http://www.musiciansunion.org.uk/news-events/2012/09/26/mu-launches-live-music-kit/> [29 Jan 2013].
- Musicians' Union, United Kingdom. 2013f. *Specialist industrial sections*. Available:
<http://www.musiciansunion.org.uk/about-us/specialist-industrial-sections-2/> [29 Jan 2013].
- Musicians' Union, United Kingdom. 2013g. *The MU political fund*. Available:
<http://www.musiciansunion.org.uk/about-us/the-mu-political-fund-2/> [29 Jan 2013].
- Musicians' Union, United Kingdom. 2013h. *The working musician*. Available:
<http://www.musiciansunion.org.uk/wp-content/uploads/2012/12/The-Working-Musician-report.pdf> [30 March 2013].
- Passman, D.S. 2011. *All you need to know about the music business*. London: Penguin Group.
- POSA. 2012. *Music royalty payments out of tune*. Available:
<http://www.posatrust.org.za/notifications/Music-royalty-payments-out-of-tune-14July2012.php> [28 June 2013].
- Performers Performance Licensing, 2014a. *About us*. Available:
<http://www.ppluk.com/About-Us/Who-We-Are/> [21 April 2014].
- Performers Performance Licensing, 2014b. *What we do*. Available:
<http://www.ppluk.com/About-Us/What-We-Do/> [21 April 2014].
- PRS for Music, 2014a. *Our organisation*. Available:
<http://www.prsformusic.com/aboutus/ourorganisation/Pages/default.aspx> [21 April 2014].
- PRS for Music, 2014b. *About PRS for Music*. Available:
<http://www.prsformusic.com/Pages/default.aspx> [18 May 2014].

Republic of South Africa. 2002. Performers' Protection Amendment Act, 2002. No. 8 of 2002. *Government Gazette*, 444(23555). Cape Town. 25 June 2002. Available: www.info.gov.za/view/DownloadFileAction?id=68114 [28 June 2013].

SAE, Cape Town. n.d. *Music Business Course information*. Available: https://capetown.sae.edu/en-gb/course/7822/The_Music_Business [24 April 2013].

SAMRO. n.d. *Performing rights unpacked*. Available: <http://www.samro.org.za/node/9468> [27 June 2013].

SAMRO. n.d. *Music creators and membership*. Available: <http://www.samro.org.za/samro-music-creators-south-africa/music-creator-or-become-a-member> [27 June 2013].

Shaw, J.G. 2010. *The South African music business*. 2nd ed. Johannesburg: adanup.

University of Cape Town Graduate School of Business. 2013. *Open Programmes. 2013 Business Acumen for Artists*. Available: <http://www.gsb.uct.ac.za/e.asp?c=619> [3 July 2013].